JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

REPORT TO THE
GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA




Dedicated Revenue Sources for Land Conservation in Virginia

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Cover photos (clockwise from upper left): Grayson Highlands State Park, Virginia Department of Conservation and Recreation; York River State Park and New Point Comfort Natural Area Preserve, John Gresham; Manassas National Battlefield Park , iStockphoto.

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This report is available on the JLARC website at
http://jlarc.virginia.gov

COMMONWEALTH of VIRGINIA

Glen S. Tittermary
Director

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September 28, 2012

The Honorable John M. O'Bannon III
Chair
Joint Legislative Audit and Review Commission
General Assembly Building
Richmond, Virginia 23219

Dear Delegate O'Bannon:

Senate Joint Resolution 335 of the 2011 Session directed the Joint Legislative Audit and Review Commission (JLARC) to study long-term dedicated funding sources for land conservation. Specifically, staff were directed to examine prior efforts and recommendations for establishing a stable source of funding for land conservation, identify funding mechanisms used by other states, and develop options for potential long-term dedicated funding sources for land conservation in Virginia.

The final report was briefed to the Commission and authorized for printing on September 10, 2012. On behalf of the Commission staff, I would like to thank the staff at the Department of Conservation and Recreation, in particular, for their assistance during this review.

Sincerely,

Glen S. Tittermary
Director

GST/mle

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ABBREVIATIONS USED IN THIS REPORT

DCR	Virginia Department of Conservation and Recreation
DGIF	Virginia Department of Game and Inland Fisheries
DHR	Virginia Department of Historic Resources
DOF	Virginia Department of Forestry
FRPP	Farm and Ranchland Protection Program
FY	Fiscal Year
GO	General Obligation (bond)
LPTC	Land Preservation Tax Credit
TAX	Virginia Department of Taxation
TNC	The Nature Conservancy
TPL	Trust for Public Land
TY	Tax Year
VDACS	Virginia Department of Agriculture and Consumer Services
VLCF	Virginia Land Conservation Foundation
VOF	Virginia Outdoors Foundation
VPBA	Virginia Public Building Authority (bond)

JLARC Report Summary

Dedicated Revenue Sources for Land Conservation in Virginia

Key Findings

- Virginia's Land Preservation Tax Credit (LPTC) accounts for the vast majority of financial support for land conservation, and is a stable and cost-efficient method of conserving land. These features of the LPTC enabled the State to increase the total number of acres conserved by 24 percent between 2002 and 2011. (Chapter 2)
- The relatively high share of total land conservation revenue available for the LPTC has the effect of emphasizing the conservation of acreage over priority land. This is because the LPTC has a relatively low ability to direct financial support toward conserving priority land. In contrast, grant and land acquisition programs have a greater ability to conserve priority land. Grant funding, however, has been relatively low, unstable, and difficult to predict. (Chapter 2)
- Unlike Virginia, most other states do not provide tax credits for land conservation, but rather achieve land conservation through grant funding and land acquisition. Virginia's tax credit is among the nation's largest and can be among the most valuable to an individual taxpayer. (Chapter 3)
- Virginia could maintain its current approach to funding land conservation if it wished to continue emphasizing acreage goals over priority land. JLARC staff identified seven options for dedicated revenue sources that could give Virginia a more balanced funding approach. Two options would have minimal financial impact, two would raise moderate amounts of revenue, two would raise more substantial amounts, and one uses multiple dedicated revenue sources in combination. (Chapter 4)

The 2011 General Assembly passed Senate Joint Resolution (SJR) 335 requiring JLARC to study long-term dedicated funding sources for land conservation (Appendix A). The mandate directs JLARC staff to identify and develop viable options for potential dedicated funding sources. In doing so, JLARC staff are directed to (i) look to other states for innovative funding mechanisms, and (ii) build upon prior legislative and administrative study efforts to establish a stable dedicated funding source for land conservation in Virginia.

LAND CONSERVATION IS ACHIEVED THROUGH ACQUIRING FULL LEGAL TITLE OR A PERPETUAL EASEMENT

Land conservation can be defined broadly as the permanent protection of land from future development for the purpose of preserving its natural, scenic, recreational, or historic conservation values. Government entities and private land trusts rely primarily on two methods to conserve land: (i) by acquiring *full legal title* to it through a fee-simple donation or purchase, or (ii) by acquiring a perpetual *conservation easement* that restricts future development on the property. Land conservation is a voluntary decision by landowners to sell or donate the full title or a perpetual easement on their land.

Virginia achieves land conservation through State agencies, local governments, federal agencies, private land trusts, and landowners. The State supports land conservation primarily through the Land Preservation Tax Credit (LPTC), with additional financial support provided through grant programs and State acquisition of land for public use. Land conservation provides numerous environmental, economic, recreational, and historic preservation benefits, and is established as a State policy in the *Constitution of Virginia*.

Recent governors have set goals to conserve 400,000 additional acres during their terms. State agencies have also set goals to conserve specific types of land, referred to herein as "priority land," including State parkland, wildlife management areas, working farms and forestland, natural areas, and historically significant land such as Civil War battlefields. Many of these lands require some form of public access. As shown in the figure on the following page, Virginia's conservation rate increased during the 2000s. To date, conservation efforts have conserved about 15 percent of Virginia's total acreage, or 3.8 million acres.

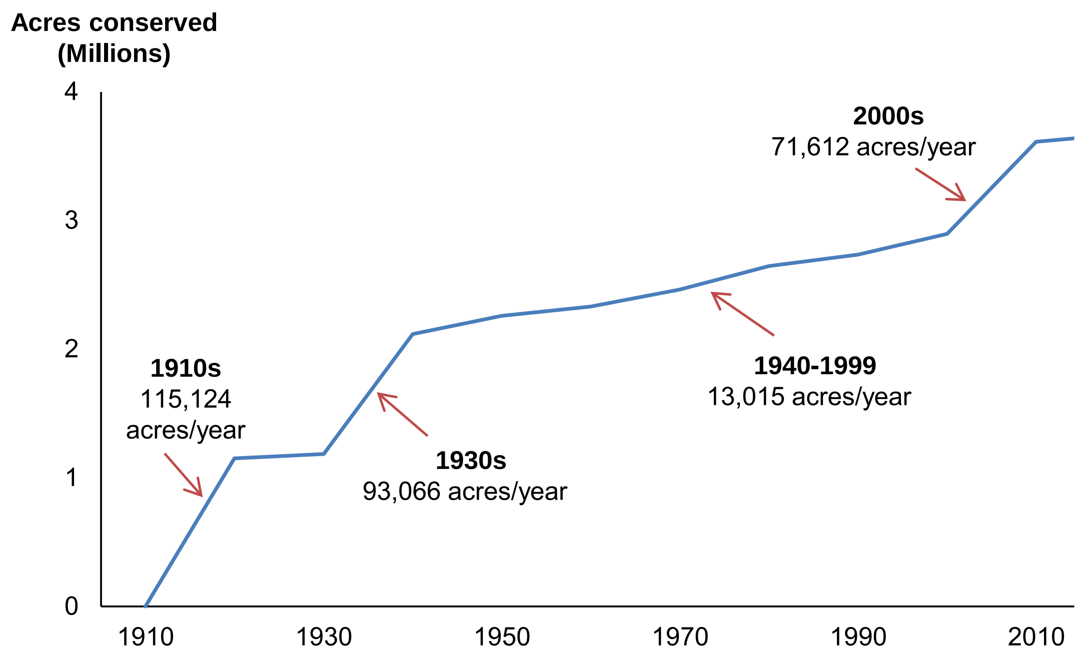
VIRGINIA'S APPROACH TO FUNDING LAND CONSERVATION EMPHASIZES CONSERVATION OF ACREAGE OVER PRIORITY LAND

As shown in the table on the following page, Virginia's approach to funding land conservation allocates a high proportion of revenue to the LPTC, with lower amounts of revenue available for grant and land acquisition programs. This results in a stable and generally cost-efficient approach. It also has the effect of emphasizing acreage goals over priority land because the LPTC has relatively limited ability to direct support towards conserving priority land or providing public access when compared to grant and land acquisition programs.

These claimed LPTC tax credits accounted for about 87 percent of total State financial support for land conservation during this period.

A total of $1.2 billion in tax credits was issued for donated easements or land between tax years (TY) 2002 and 2011, of which taxpayers have claimed approximately $901 million. These claimed LPTC tax credits accounted for about 87 percent of total State financial support for land conservation during this period. About

Number of Acres Conserved in Virginia Grew Over the Past Century, and Conservation Rates Increased in the 1910s, 1930s, and 2000s



Source: JLARC staff analysis of data from the Virginia Department of Conservation and Recreation.

Virginia's Land Conservation Programs Differ in Their Financial Allocation, Financial Stability, Cost Efficiency, and Ability to Direct Support Towards Goals

	Financial criteria			Criteria related to goals	
	Allocation	Stability	Cost efficiency	Total acreage	Priority land
LPTC	High	High	High	High	Low
Land acquisitions	Low	High	Varies	Low	High
Grants	Low	Low	Varies	Varies	High

Note: The criteria for cost efficiency, total acreage, and priority land were measured relative to other conservation programs.

Source: JLARC staff analysis.

nine percent of financial support was for land acquisitions by State agencies, while four percent was for grant programs.

As shown in the next table, the LPTC has been a relatively stable source of financial support for land conservation, with only a four percent average annual percentage change in available financial support over the past decade. By contrast, funding for Virginia's grant programs has been much less stable. Grant program funding has changed, on average, 148 percent each year since 2002. During that time, funding for grant programs has changed by more than 50 percent five times, and changed direction four times.

Financial Support for the LPTC Has Been Relatively Stable, While Funding for Grant Programs Has Been Unstable and Difficult to Predict (2002-2011)

Program	Average annual percent change in funding[a]	Number of years annual percent change was more than 50%	Number of years funding trend changed direction
Land Preservation Tax Credit	4%	0	2
Land acquisitions[b]	26%	2	3
Grant programs	148%[c]	5	4

[a] Calculated for available funding rather than actual expenditures. For example, because the amount of LPTC credits available prior to TY 2007 was not limited, there was no annual change in financial support available through the LPTC.
[b] Excludes any unexpended bond funds remaining from a 1992 general obligation bond which authorized $36 million for land acquisition. Also excludes $12 million spent on land acquisition from dedicated revenue sources since agencies typically had discretion over when and how much of these funds was used for land conservation.
[c] Excludes the percent change in funding from 2003 to 2004, when funding increased from $0 to $1.5 million.

Source: JLARC staff analysis of data provided by State agencies.

The LPTC has also been a relatively cost-efficient conservation method, for two reasons: (i) it primarily acquires conservation easements, which cost less than acquiring the full legal title, and (ii) it leverages private landowners' donations and a federal tax deduction. Certain grant and land acquisition programs have been more or less cost efficient than the LPTC, depending on the extent to which they acquire easements and their ability to leverage non-State resources. Although acquiring an easement or title at full cost may be less cost efficient in the short term, according to land conservation stakeholders and State agency staff, many of these conservation projects have the potential to become more cost efficient over time as economic and other benefits are realized.

In terms of achieving the State's land conservation goals, Virginia's use of the LPTC has helped it increase its conservation rate and meet the former governor's statewide acreage goal. Despite a slower conservation rate in the last two years, the total number of acres conserved in Virginia has still increased 24 percent between TY 2002 and TY 2011. Approximately 76 percent of these additional acres were conserved through the LPTC.

The LPTC has a relatively low ability to direct financial support towards priority land or provide for public access.

The LPTC has also helped Virginia conserve a substantial amount of land with important conservation value, and much of this land has met certain conservation priorities. For example, more than 70 percent of conserved acres receiving LPTC credits has been within the Chesapeake Bay watershed, contributing to the bay's protection. However, compared to grant and land acquisition programs, the LPTC has a relatively low ability to direct financial support towards priority land or provide for public access. This makes it more difficult to direct State financial support towards conserving priority land, such as State parks, wildlife management areas, and other land with public access that generally cannot be conserved through easements, as well as Civil War battlefields and other historically valuable sites.

COMPARED TO OTHER STATES, VIRGINIA TENDS TO RELY MORE ON TAX CREDITS TO SUPPORT LAND CONSERVATION

Compared to other states, Virginia has historically provided an average amount of State financial support for land conservation. Between 1998 and 2005, Virginia provided $4.62 per capita in State financial support for land conservation while the national average was $4.63.

Virginia is one of only 15 states that have land conservation tax credits, while the remaining 35 states rely on grant and land acquisition programs supported by general fund appropriations and various dedicated revenue sources. Virginia's credit is among the largest when compared to the other 14 states that have land conservation tax credits. Depending on an individual's tax liability, the LPTC can also be among the more valuable credits compared to other states.

DEDICATED REVENUE SOURCES COULD IMPROVE VIRGINIA'S ABILITY TO CONSERVE PRIORITY LAND

Virginia has the option of continuing its current approach to land conservation and relying primarily on the LPTC to support conservation projects. This approach has the effect of emphasizing acreage goals over conserving priority land, but allows the State to achieve a high conservation rate in a cost-efficient manner. Alternatively, Virginia could adopt a more balanced approach and distribute a greater share of land conservation revenue to grant and land acquisition programs. This approach would have the effect of giving increased emphasis to conserving priority land.

JLARC staff reviewed a wide range of dedicated revenue options, and identified seven options that could allow Virginia to adopt a more balanced funding approach by providing additional dedicated revenue for grant and land acquisition programs. Two options would have minimal financial impact, two would raise a moderate amount of additional revenue, and two would raise a substantial amount of revenue. A final option would use multiple revenue sources in combination to raise a moderate amount of additional revenue.

As shown in the table on page vii, all seven options would positively impact the State's ability to achieve goals related to conserving priority land. Options 1 and 2 redistribute roughly the same amount of total available revenue for land conservation, and were developed in light of the State's current fiscal situation. Options 3 through 7 increase the total amount of available revenue for land conservation. These increases, however, would come at the expense of various taxpayers, including those who use the LPTC, those paying recordation taxes and fees on various transactions, or all taxpayers in the form of repaying bond debt. Option 7 would reduce the impact on taxpayers by increasing multiple revenue sources in smaller amounts to raise a moderate amount of additional revenue.

Implementing any of the options would represent a change from Virginia's current approach that relies primarily on the LPTC and emphasizes conserving acreage over priority land. In considering these options, therefore, policymakers would be contemplating a move towards a more balanced approach to land conservation funding. This more balanced approach would have a variety of positive and negative impacts, but in all cases would improve Virginia's ability to conserve priority land through grant and land acquisition programs.

Options Could Direct Revenue to Priority Land and Result in a More Balanced Funding Approach but Also Would Have Other Positive and Negative Impacts

● No impact ↑ Positive impact ↓ Negative impact

	Impact: Goals		Impact: Financial				
Option	Total acreage	Priority land	Available revenue	Taxpayers	Allocation	Stability	Cost efficiency
Minimal additional revenue							
1. Dedicate revenue to grant and land acquisition programs	●	↑	●	●	●	↑	↑
2. Redirect financial support from LPTC	↓	↑	●	●	↑	↑	↑ / ↓
Moderate additional revenue							
3. Increase LPTC transfer fee	↑	↑	↑	↓	↑	●	↑
4. Increase and expand $1 Open Space Preservation Fee	↑	↑	↑	↓	↑	●	↑
Substantial additional revenue							
5. Authorize additional bonds	↑	↑	↑	↓	↑	●	↓
6. Dedicate State recordation tax revenue	↑	↑	↑	↓	↑	↑ / ↓	↑
Combination							
7. Increase multiple revenue sources by smaller amounts	↑	↑	↑	↓	↑	↑ / ↓	↑ / ↓

Note: LPTC, Land Preservation Tax Credit.

Source: JLARC staff analysis.

Chapter

1 Virginia Uses a Variety of Approaches to Support Land Conservation

In Summary

Land conservation is the permanent protection of land from future development. Land is conserved by acquiring (i) the full title or (ii) a perpetual conservation easement. Land conservation is a voluntary decision by landowners to sell or donate an easement or the full title to a government entity or land trust. Most of the approximately $1 billion in financial support for land conservation in the last decade came from foregone income taxes revenue, general revenue, and State bonds. Revenue from dedicated sources was relatively low. Virginia's primary land conservation program is the Land Preservation Tax Credit (LPTC). The State also has four grant programs that support a broad range of conservation projects, and State agencies acquire land such as State parks and wildlife management areas for public use. Land conservation has numerous environmental, economic, recreational, and historic preservation benefits, and its importance is reflected in the *Constitution of Virginia* and land conservation goals set by recent governors and State agencies. Approximately 3.8 million acres of land are now conserved in Virginia, representing 15 percent of the State's total acreage. Virginia's conservation rate increased in the 2000s as State financial support for land conservation expanded, but the rate has declined in recent years due to decreased financial support and the recent recession.

The 2011 General Assembly passed Senate Joint Resolution (SJR) 335 requiring JLARC to study long-term dedicated funding sources for land conservation (Appendix A). The mandate directs JLARC staff to identify and develop viable options for potential dedicated funding sources. In doing so, JLARC staff are directed to (i) look to other states for innovative funding mechanisms, and (ii) build upon prior legislative and administrative study efforts to establish a stable dedicated funding source for land conservation in Virginia. SJR 335 notes that the Commonwealth has "well-designed programs and tools to incentivize land conservation by private landowners, but lacks a stable funding source to support such programs and to allow for comprehensive targeting of conservation dollars to attain the highest benefit."

To address the study mandate, JLARC staff interviewed State agency staff and land conservation stakeholders; analyzed Virginia's land conservation programs and funding methods; reviewed land conservation funding methods in selected other states; and assessed the viability of a variety of potential dedicated revenue options. More detailed information about this study's research methods is in Appendix B.

LAND CONSERVATION IS THE PERMANENT PROTECTION OF LAND FROM FUTURE DEVELOPMENT

Land Trusts

Land trusts are private, non-profit organizations that conserve land through conservation easements or fee-simple acquisitions. Land trusts focus on a variety of geographic regions and types of conservation, such as protecting agricultural land.

Land conservation can be defined broadly as the permanent protection of land from future development for the purpose of preserving its natural, scenic, recreational, or historic conservation values. A primary goal of land conservation is to manage the development and use of land in ways that preserve these values. A wide range of land can be conserved, including open spaces, wildlife habitats, working farms and forestland, environmentally sensitive areas, and land with cultural, historical, or recreational value. In Virginia, conserved land includes federal parks and forests; State-owned land available for public use, such as State parks and forests; and local public parks and nature preserves. Conserved land in Virginia also includes land held by land trusts, either under a conservation easement or through full legal title.

Land may be conserved for a variety of reasons, including to protect scenic open space, preserve a critical wildlife habitat, prevent certain development on farm or forestland, provide recreational opportunities for the public, or preserve land with historic significance. Land conservation is one of three potential land uses. In addition to being conserved, land can also be developed for residential, industrial, or commercial purposes, or remain undeveloped with the potential for future development. In this way, nearly all land conservation projects represent a tradeoff between preserving land in its natural state and allowing it to be developed.

Land Conservation Is Achieved Through Acquiring Full Legal Title or a Perpetual Easement

Fair Market Value

The Internal Revenue Service defines fair market value as the price for which property would sell on the open market.

Government entities and private land trusts rely primarily on two methods to conserve land. First, land may be conserved by acquiring *full legal title* to it through a fee-simple donation or purchase. The fee-simple purchase of land may be at its fair market value, or below fair market value through a bargain sale in which the landowner donates part of the cost of conserving the property. Government entities generally acquire land for parks through fee-simple purchases. When land is conserved through a fee-simple acquisition, the landowner relinquishes all ownership rights and public access to the property can be assured. Acquiring full legal title to a property is the more expensive of the two primary conservation methods, but it often provides additional benefits such as regular public access and economic benefits associated with recreational activity and tourism.

A second method for conserving land is acquiring a perpetual *conservation easement* that restricts future development on the property. A conservation easement is a legally binding agreement that becomes a permanent encumbrance on the land's title and is transferred to new owners. Each easement is an attempt to balance the private use of a property with the protection of its conservation value. Easement terms are negotiated between the landowner and the easement holder to specify prohibited and permitted uses of the property.

Conservation easements can be donated, purchased at full price, or purchased below fair market value in a bargain sale. When a conservation easement is purchased, it is often referred to as a purchase of development rights because the landowner is selling the current and future development rights on the property. Conservation easements have become more common in recent years because they minimize the cost of conserving land and allow it to remain privately owned. The following case study illustrates how a landowner donated land through a conservation easement to protect it from future development in perpetuity, while still allowing it to be actively farmed and privately owned. Donating the conservation easement made the landowner eligible to receive State and federal tax benefits.

> ***Case Study: Example of Conservation Easement***
> *In 2010, the owner of a dairy farm in Wythe County donated a 274-acre conservation easement to the Virginia Outdoors Foundation. The farm has been in the same family for eight generations, and the owner wanted to ensure the land would remain undeveloped for future generations. According to the foundation, development pressure has recently accelerated the loss of farmland in Wythe County. The property also is part of the New River watershed and is located between a national forest and a wildlife management area. The terms of the easement allow the owner to continue raising dairy cattle and conducting other agricultural and forestry activities, but prohibit dividing the property into more than three parcels or using the land for industrial or commercial development. Donating the easement made the property owner eligible to receive tax benefits through Virginia's Land Preservation Tax Credit and the federal income tax deduction for charitable donations.*

Land Conservation Is a Voluntary Decision by a Landowner to Sell or Donate Full Title or Perpetual Easements on Land

Land conservation in Virginia requires the voluntary agreement of landowners to sell or donate land or easements to State agencies, localities, or land trusts. Section 10.1-1701 of the *Code of Virginia* prohibits government entities in Virginia from using eminent domain for conservation purposes. Once landowners express interest in conserving land, they work with a land trust or public entity to determine the best conservation method to use and how much compensation (if any) they will require. Landowners place land under conservation for a variety of reasons, including the desire to permanently protect their property from development, to qualify for conservation tax incentives, or because conservation offers the best sale price for their property.

Virginia Conservation Lands Needs Assessment

The Virginia Conservation Lands Needs Assessment was developed by DCR in 2007 with input from other State agencies. The assessment consists of seven GIS models that identify the most important areas for future land conservation and undeveloped corridors to connect them.

Land conservation opportunities often arise when a landowner decides to donate his or her land or a conservation easement. In other cases, land is conserved when government entities or private land trusts are willing to pay the fair market value of an easement or land that is deemed to possess significant conservation value. State agencies, localities, and land trusts identify land that is a conservation priority (referred to herein as “priority land”) using Geographic Information System (GIS) mapping resources such as the Virginia Conservation Lands Needs Assessment, local comprehensive plans, and lists such as the federal Civil War Sites Advisory Commission Report and State and national historic registers. Once priority land is identified, staff from government entities or land trusts may inform landowners about the conservation value of their property and make an offer. However, the decision to sell or donate the land or an easement ultimately remains with the landowner.

Conserved Land Requires Ongoing Stewardship to Manage Conservation Assets or Monitor Easement Compliance

After land is placed under conservation, land trusts and public entities are responsible for protecting its conservation value and monitoring compliance with easements through ongoing stewardship. Stewardship of land conserved through acquisition of full legal title involves actively managing and maintaining the land. For example, State forests are self-sustaining through timber sales, and the Department of Forestry (DOF) uses forest management practices such as timber harvesting, reforestation, and insect control to preserve this forestland. The department also annually monitors timber harvests and easement compliance on land for which it holds easements. The Department of Conservation and Recreation (DCR) conducts similar stewardship activities in Virginia’s State parks and natural area preserves.

Land placed under conservation easement also requires active monitoring and oversight. Stewardship activities associated with conservation easements may include visiting the property or using aerial photography to monitor compliance with easement terms. When a property is sold or divided, easement holders help new owners understand the terms of the easement. In certain cases, legal enforcement of easement terms may be necessary if an owner attempts to develop the land in violation of easement restrictions. The appropriate stewardship activities often depend on the type of land conservation. While land conserved for open space purposes can more easily be monitored through aerial photography, stewardship of land with historic structures requires onsite inspection. In general, stewardship responsibilities for land under easement increase as more land is conserved and property under easement is divided or transferred to new owners.

VIRGINIA CONSERVES LAND THROUGH VARIOUS ENTITIES, USING DIFFERENT REVENUE SOURCES AND PROGRAMS

Land conservation efforts in Virginia are undertaken by government entities and private land trusts through tax incentives, grant programs, and local, State, and federal land acquisitions. State land conservation programs are funded largely with general revenue foregone through the Land Preservation Tax Credit (LPTC), other general revenue, and tax-supported bonds. Dedicated revenue sources are used to a limited extent, primarily to fund land stewardship activities.

Various Public and Private Entities Work to Conserve Land in Virginia

A variety of government entities and private land trusts support land conservation efforts in Virginia. Under the Open-Space Land Act (§10.1-1700 of the *Code of Virginia*), State agencies, localities, and other government entities have the authority to acquire full title or easements for the preservation of open-space land. Currently, six State agencies have land conservation responsibilities (Table 1). DCR acts as the State's lead conservation agency and has a broad range of responsibilities that include managing State parks and natural area preserves, and developing the *Virginia Outdoors Plan*, which is the State's primary conservation planning document. The Virginia Outdoors Foundation, created by the General Assembly in 1966 to promote open space preservation, holds over 3,300 easements covering 650,000 acres in the Commonwealth, more easements than any other land trust in the nation. Other State agencies oversee programs aimed at conserving specific types of land, such as wildlife management areas, State forests, or farmland.

The federal and local governments also participate in Virginia's land conservation efforts. Localities often conserve land for local parks and nature preserves. With the assistance of State matching grants, 22 localities have created local purchase of development rights (PDR) programs to purchase conservation easements on agricultural land.

Virginia also receives federal funding for land conservation through a variety of federal programs. Since 1966, the State has

Table 1: Six State Agencies Have Land Conservation Responsibilities

State agency	Land conservation responsibilities
Department of Conservation and Recreation (DCR)	Acquires and oversees State parks and natural area preserves Holds easements for a variety of types of land Publishes the *Virginia Outdoors Plan* Oversees progress towards the Governor's 400,000 acre goal Provides support to the Virginia Land Conservation Foundation
Virginia Outdoors Foundation (VOF)	Holds over 3,300 easements and 650,000 acres of protected land Administers the Open Space Lands Preservation Trust Fund
Department of Game and Inland Fisheries (DGIF)	Acquires and oversees wildlife management areas Holds easements
Department of Forestry (DOF)	Acquires and oversees State forests Holds easements on working forestland
Department of Historic Resources (DHR)	Administers Civil War Battlefield Preservation State matching grants Holds more than 550 easements on historically, culturally, and archeologically significant land
Department of Agriculture and Consumer Services (VDACS)	Administers State matching grants for local purchase of development rights programs for the conservation of agricultural land

Note: The Virginia Department of Environmental Quality also administers State loans and grants for land conservation purposes, but does not acquire land for conservation or hold conservation easements.

Source: JLARC staff analysis of the *Code of Virginia* and information provided by State agency staff.

received $77 million in grants from the Land and Water Conservation Fund for the acquisition and development of open space for conservation and recreation. Additional funds have also come from the following federal programs:

- Farm and Ranchland Protection Program
- Forest Legacy Program
- American Battlefield Protection Program
- Coastal Zone Management Program
- Coastal Wetlands Conservation Fund
- Pittman-Robertson Act

Additionally, the Virginia Conservation Easement Act (§10.1-1009 of the *Code of Virginia*) of 1988 grants qualifying non-profit land trusts similar authority to acquire conservation easements. Virginia currently has about 35 land trusts. Several land trusts, such as the Nature Conservancy and the Trust for Public Land, conserve land on a statewide basis, while others focus their conservation efforts on more local or regional areas of the State. Land trusts perform several functions that support Virginia's land conservation efforts, including

- assisting landowners with placing land under easement;

- identifying land with conservation value important to the land trust's mission; and
- purchasing or accepting donated easements or titles.

Other conservation organizations, such as the Chesapeake Bay Foundation and Ducks Unlimited, may also hold conserved land.

Although land can be conserved through the efforts of a single conservation entity, it is often accomplished through collaborative efforts.

Although land can be conserved through the efforts of a single conservation entity, it is often accomplished through collaborative efforts. Many land conservation projects are undertaken by public-private partnerships involving federal, State, and local governments as well as private land trusts and donors. These partnerships are developed to identify potential conservation projects and raise funds to purchase easements or acquire land. For example, a land trust may purchase an easement or title with its own funds as well as grants from federal, State, and local governments.

Virginia Relies Primarily on General Revenue to Support Land Conservation Programs

Virginia uses four sources of financial support to provide funding for land conservation programs (Table 2). Support for the LPTC is in the form of foregone income tax revenue because the value of tax credits represents the reduction in the amount of tax that eligible landowners owe to the State. Unlike many other State programs, tax incentives are not part of the budget or appropriations process. Revenue from tax-supported State bonds is the primary source of funding for land acquisitions by State agencies, while general revenue provides most funding for grant programs.

Table 2: Four Sources of Financial Support Are Used to Fund Land Conservation Programs

Source of financial support	Programs funded
Foregone income taxes	Land Preservation Tax Credit
Bonds	Land acquisitions by DCR, DOF, and DGIF Civil War Battlefield Preservation Grants (DHR)
General revenue	Open Space Lands Preservation Trust Fund (VOF) Virginia Land Conservation Foundation (DCR) Civil War Battlefield Preservation Grants Farmland Preservation Grants (VDACS)
Dedicated revenue	Land Preservation Tax Credit (administrative costs) Stewardship by State agencies and land trusts Virginia Land Conservation Foundation Open Space Lands Preservation Trust Fund Land acquisitions

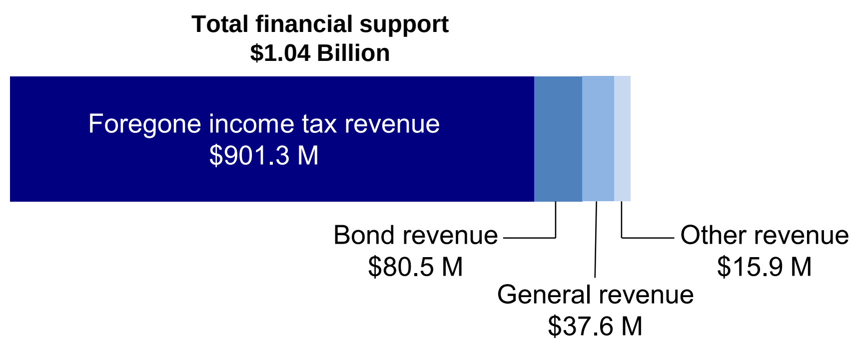
Source: JLARC staff analysis of the *Code of Virginia* and information provided by State agencies.

Revenue from other dedicated sources is used mainly to support stewardship efforts, but also provides more limited funding for grant and land acquisition programs.

As shown in Figure 1, nearly all of the approximately $1 billion in revenue for land conservation programs over the last decade has been from foregone income taxes, tax-supported bonds, and general revenue. Only approximately $16 million of total land conservation revenue during this period—or less than two percent—came from other sources, including dedicated sources.

A major focus of the study mandate is to identify dedicated revenue sources for land conservation in Virginia. The State currently uses two dedicated revenue sources for land conservation, with much of the funding used for stewardship activities rather than conserving new land (Table 3). Over the last decade, the two percent fee on the transfer of LPTC credits and the $1 fee on the recordation of various deeds has provided a total of $12 million. However, none of this revenue was used to conserve new land. Approximately $5.3 million of this total–including all revenue from the $1 recordation fee and a small amount from the LPTC transfer fee–went to stewardship efforts by government entities and land trusts. About $2.3 million of revenue from the two percent fee was used to administer the LPTC, while $2.1 million was diverted to the State's general fund.

Figure 1: Nearly All Financial Support for Land Conservation in Virginia Has Been From General Revenue Sources (2002-2011)



Note: Excludes (i) financial support that has been authorized but not spent, and (ii) $5.3 million in revenue from the LPTC transfer fee and Open Space Preservation fee that was used for stewardship efforts between FY 2002 and FY 2011. State agencies also use other general and non-general fund sources to support stewardship.

Source: JLARC staff analysis of data from State agencies.

Table 3: Two Revenue Sources Provide Dedicated Revenue for Stewardship of Conserved Land

Dedicated source	Use of revenue	Total revenue, FYs 2002-2011 ($ Millions)
Two percent fee on value of donated interest when LPTC credits are transferred (§58.1-513)	Up to half of funds are used by the Virginia Department of Taxation (TAX) and DCR for administering the LPTC; remaining funds are distributed to land trusts and State agencies for stewardship	$6.8
$1 Open Space Preservation fee on recorded deeds (§58.1-817)	Funds are used by VOF for the stewardship of existing easements	5.2
	Total	**$12.0**

Source: JLARC staff analysis of the *Code of Virginia*, information from DCR, and data from TAX.

In addition to these dedicated sources, DGIF occasionally uses revenue from five sources to support its land conservation efforts:

- the sale of wildlife conservation license plates;
- the sale of hunting and fishing licenses;
- a two percent sales tax on certain outdoor-related goods;
- the sale of a conservation stamp required when purchasing a license to hunt migratory waterfowl; and
- voluntary contributions from income tax refunds.

Since FY 2002, DGIF has used approximately $12 million in revenue from these sources to fund land acquisitions. However, most revenue from these sources was used for agency operations and research. Finally, DCR also uses voluntary tax return contributions to support the development of land acquired for State parks.

Virginia's Primary Land Conservation Program Is the Land Preservation Tax Credit

The primary funding source for land conservation in Virginia is the LPTC. The LPTC provides landowners with a tax credit worth 40 percent of the fair market value of land or easements donated for conservation purposes. There is no limit on the amount of LPTC credits a single beneficiary can receive, but the total amount of credits issued per year is capped at $100 million, plus an annual inflationary adjustment. The LPTC is capped at approximately $111 million in tax year 2012. Individuals can claim up to $100,000 in credits per year for up to ten years after credits are issued. Unused credits can be transferred to buyers through private exchanges.

LPTC Has Eight Conservation Purposes Outlined in Statute:

(1) agricultural use,
(2) forestal use,
(3) natural habitat and biological diversity,
(4) historic preservation,
(5) outdoor recreation or education,
(6) watershed preservation,
(7) scenic open space preservation, and
(8) conservation of open space land designated by governments.

To qualify for the LPTC, landowners must donate an easement or full legal title to a Virginia governmental body, including State agencies, localities, qualifying local agencies, or a qualified land trust. Landowners work with the conservation entity to donate the full title or negotiate an easement that protects the land's conservation value. Donations must meet one of eight broad conservation purposes (see sidebar). Landowners then apply to TAX for the LPTC credit, and credits are awarded in the order in which applications are processed. As part of its review process, TAX has the authority to audit the appraised fair market value of donations, and can require a second appraisal if necessary. DCR reviews donations to verify the conservation value for easements or land appraised at $2.5 million or more, or those which result in credits of $1 million or more. This review process involves ensuring that easements contain appropriate safeguards to protect the conservation value of the land in perpetuity.

A total of $1.2 billion in LPTC tax credits was issued for donated easements or land between tax years 2002 and 2011.

A total of $1.2 billion in LPTC tax credits was issued for donated easements or land between tax years (TY) 2002 and 2011. Issued credits averaged $121 million annually during this period, peaking at $248 million in 2006 and meeting the $100 million cap each year since a limit was established in 2007. Taxpayers have claimed approximately $901 million of the $1.2 billion in total credits issued over the last decade. The average annual amount of credits claimed was $90 million, with a high of $172 million claimed in 2006. Because taxpayers have ten years to claim LPTC credits, approximately $120 million in unclaimed credits are still eligible to be claimed. These tax credits, therefore, represent a potential future financial obligation for the State.

The value of the LPTC to individual taxpayers can be substantial and is enhanced by the credit's transferability. The average donor has received approximately $475,000 in tax credits since TY 2002. However, the value of the tax credit has been concentrated among a small number of donors. Eight percent of total donations have resulted in tax credits of $1 million or more, accounting for nearly half of the more than $1.2 billion in total credits issued. Donors can sell credits to still benefit from those in excess of their tax liability or the annual cap on credits claimed. Nearly 90 percent of the $1.2 billion in issued credits have been transferred since the LPTC was made transferable in 2002.

In addition to the LPTC, a variety of other State, federal, and local tax incentives promote land conservation in Virginia. For example, the State grants a tax deduction on capital gains from the sale of land or easements for conservation purposes. Virginia also offers a refundable tax credit for the protection of riparian buffers (forested land next to a body of water) worth 25 percent of the value of the timber retained as a buffer (up to $17,500) for easements. Federal tax incentives also promote the donation of conservation easements through income tax and estate tax reductions and exclusions. Finally, 77 of Virginia's 134 localities tax real estate devoted to agricultural, horticultural, forestal, or open space uses based on the value of the current use, rather than its higher market value (which reflects the future development potential of the land).

State Also Has Four Grant Programs That Support Land Conservation

Four grant programs in Virginia assist land trusts, localities, and other State agencies with land conservation projects (Table 4). These grant programs received a total of $42 million over the last decade, primarily through general fund appropriations. The largest grant program is the Virginia Land Conservation Foundation (VLCF), which received over half of total State funding for grant programs during this period. Three-fourths of VLCF's annual appropriation is divided equally among the main types of land conservation, which include open spaces and parks, natural areas, historic areas, and farmland and forest preservation. Grant applications are reviewed by an interagency workgroup and awarded on a competitive basis. The remaining one-fourth of VLCF's annual appropriation is dedicated to the Open Space Lands Preservation Trust Fund, which provides need-based grants to assist landowners with the cost of developing an easement, including land appraisal costs, attorney fees, and all or part of the easement's value.

The remaining two grant programs focus more narrowly on specific types of land conservation. A total of $6.9 million in State funding over the last decade was provided for grants to conserve Civil War battlefields through acquisitions and easements. The program is

Table 4: Grant Programs Received About $42 Million in State Funds Over the Last Decade to Support a Broad Range of Conservation Projects

Program (Agency)	Type of land conservation	Total funding, FYs 2002-2011 ($ Millions)
Virginia Land Conservation Foundation (DCR)	Open spaces and parks; natural areas; historic areas; and farmland and forests	$22.3
Open Space Lands Preservation Trust Fund (VOF)	Grants to landowners for the cost of donating conservation easements or funding local PDR programs	7.4
Civil War Battlefield Preservation Grants (DHR)	Easements on and fee-simple acquisitions of Civil War battlefields	6.9
Farmland Preservation Grants (VDACS)	Grants to localities for purchase of development rights programs	5.3
	Total	**$41.9**

Source: JLARC staff analysis of data provided by State agencies.

overseen by the Department of Historic Resources (DHR) and grants are competitively awarded to battlefields listed in the 1993 study, *Report on the Nation's Civil War Battlefields*. Finally, $5.3 million in State funding was provided for grants to localities for the conservation of agricultural land through local PDR programs. To qualify for such grants, localities must create a PDR program and provide local funds to match the State grant.

In addition to general fund appropriations, approximately ten percent of total State funding for grant programs between FY 2002 and FY 2011 came from non-general fund or dedicated revenue sources. VLCF and the Open Space Lands Preservation Trust Fund received about $4 million from a $1 vehicle registration fee and interest generated on the Virginia Land Conservation Fund. The vehicle registration fee, which was established to support the 400th anniversary of the Jamestown settlement, was not continued after FY 2007, and interest generated on the Virginia Land Conservation Fund was redirected to the general fund in FY 2008.

State Acquires the Full Legal Title to Land for Public Use

State agencies in Virginia also conserve land by acquiring it for public use as State parks, State forests, wildlife management areas, and natural area preserves (Table 5). State parks and forests provide recreational opportunities, such as hiking, biking, camping, and hunting. Wildlife management areas are available to the public for hunting, fishing, and trapping. Natural area preserves are acquired to protect rare habitats and natural communities, with some open to public recreation.

State acquisition of land for public use is primarily funded with revenue from general obligation and Virginia Public Building Authority bonds, with smaller amounts of funding from non-general fund sources. One general obligation bond in FY 2002 and two Virginia Public Building Authority bonds in FY 2002 and 2008 authorized a total of $86.5 million for land conservation. As of May 2012, State agencies had spent over 90 percent of the $86.5 million in bond funds authorized for land conservation since FY 2002. Of

Table 5: Four State Agencies Acquire Land for Public Use

State agency	Type of land	Number	Total acres
DGIF	Wildlife management areas	39	203,000
DCR	State parks	35	120,000
DOF	State forests	22	67,920
DCR	Natural area preserves	60	50,580

Source: JLARC staff analysis of data provided by State agencies.

the $6 million in remaining authorized funds, approximately $2.5 million was awarded through DHR's Civil War Sites Preservation Fund grants in FY 2012. Less than $3 million in authorized funds were unobligated as of May 2012, although these funds have been largely targeted to specific projects and due diligence is continuing. Finally, as noted above, DGIF has used approximately $12 million in revenue from non-general fund sources to fund land acquisitions.

VIRGINIA'S LAND CONSERVATION GOALS AND POLICIES ENCOURAGE CONSERVING ACREAGE AND SPECIFIC TYPES OF LAND

Land conservation provides numerous environmental, economic, and recreational benefits for Virginia, and its importance is recognized in the *Constitution of Virginia* and State agency goals. However, there is no guidance in the *Constitution* or *Code of Virginia* on the appropriate amount of land that should be conserved. The need for future land conservation depends on the priority given to conservation, the State's population, the priority given to development, and other factors. The appropriate balance, therefore, between conserved land and land available for development is ultimately a policy choice.

The appropriate balance, therefore, between conserved land and land available for development is ultimately a policy choice.

Land Conservation Provides Environmental, Economic, Recreational, and Historic Preservation Benefits

Land conservation provides a variety of benefits. Nearly all land conservation projects provide environmental, ecological, and wildlife benefits. Preserving land in its natural state can improve water quality and decrease erosion caused by development. This can be especially valuable in areas with surface or ground water used for drinking, and in the Chesapeake Bay watershed where excess nutrient and sediment pollution threaten water quality. Conserved land also helps maintain ecosystem biodiversity by preserving the natural habitat of rare and valuable plant and animal species. Many of Virginia's native species are valuable sources of food, while other species provide opportunities for recreational activities like bird watching and fishing. Finally, land conservation helps preserve the State's rural heritage and provides opportunities to see Virginia as it has looked for centuries.

Certain types of land conservation can also result in economic benefits that provide a return on public funds for conservation. For example, the preservation of working farms and forestland helps maintain the agricultural and forestry industries by ensuring such land remains productive in perpetuity. These are among the largest industries in Virginia, combining for an annual economic impact in Virginia of approximately $79 billion and providing an estimated 10.3 percent of jobs in the State.

Conserved land with recreational, historical, or cultural value also can provide economic benefits by generating economic activity and supporting Virginia's tourism industry. Publicly-owned land such as State parks and forests, wildlife management areas, and natural area preserves provide recreational opportunities such as hunting, fishing, hiking, camping, and wildlife-watching. These activities can have a substantial economic impact. In 2006, Virginia residents and nonresidents spent an estimated $2.4 billion on wildlife-associated activities, including hunting, fishing, and wildlife-watching. Virginia's State parks had an estimated direct economic impact in 2005 of more than $156 million. Additionally, historic sites are among the top destinations for those sightseeing in Virginia. For example, the preservation of Civil War battlefields is intended to help attract tourists to events, such as the 150th anniversary of the Civil War. In 2010, Virginia's tourism industry generated nearly $19 billion in economic benefits in Virginia.

Virginia Has Established Land Conservation as a State Policy and Recent Governors Have Set Conservation Acreage Goals

Land conservation is identified as a State policy in the *Constitution of Virginia*. Article XI Section 1 of the *Constitution* states that

> it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Section 2 authorizes the State to conserve land, stating that "the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth" in furtherance of this policy. Section 4 affirms the right of Virginia residents to hunt, fish, and harvest game.

To support the State's land conservation policy and promote conservation efforts, governors and State agencies have set conservation goals. The current Governor and his predecessor established goals to conserve 400,000 additional acres of land during their administrations. The former Governor set this goal in 2006, and under his administration over 424,000 additional acres were conserved. Upon taking office in January 2010, the current Governor set an identical goal. As of June 2012, 117,818 additional acres had been conserved in Virginia toward this goal. In addition to the governors' goals, several State agencies have set goals in support of Virginia's land conservation efforts. For example, DGIF has set an agency goal to increase access to public and private land and waterways for hunters, anglers, and other outdoor enthusiasts.

In recent years, Virginia has also participated in regional initiatives aimed at conserving land in the Chesapeake Bay watershed. In 2000, the four jurisdictions comprising the Chesapeake Bay watershed–Virginia, Pennsylvania, Maryland, and the District of Columbia–agreed through the Chesapeake Bay Program to protect 20 percent of the bay's watershed by 2010. The goal was successfully met in 2009, as Maryland, Pennsylvania, and Virginia collectively conserved 7.3 million acres of watershed land (450,000 acres beyond the initial goal). In 2006, the Chesapeake Executive Council adopted a goal to preserve 695,000 additional acres of high-quality forests by 2020. Virginia is one of five states (Maryland, Pennsylvania, Delaware, and New York are the others) currently working toward this goal.

ABOUT 15 PERCENT OF VIRGINIA'S ACREAGE HAS BEEN CONSERVED TO DATE

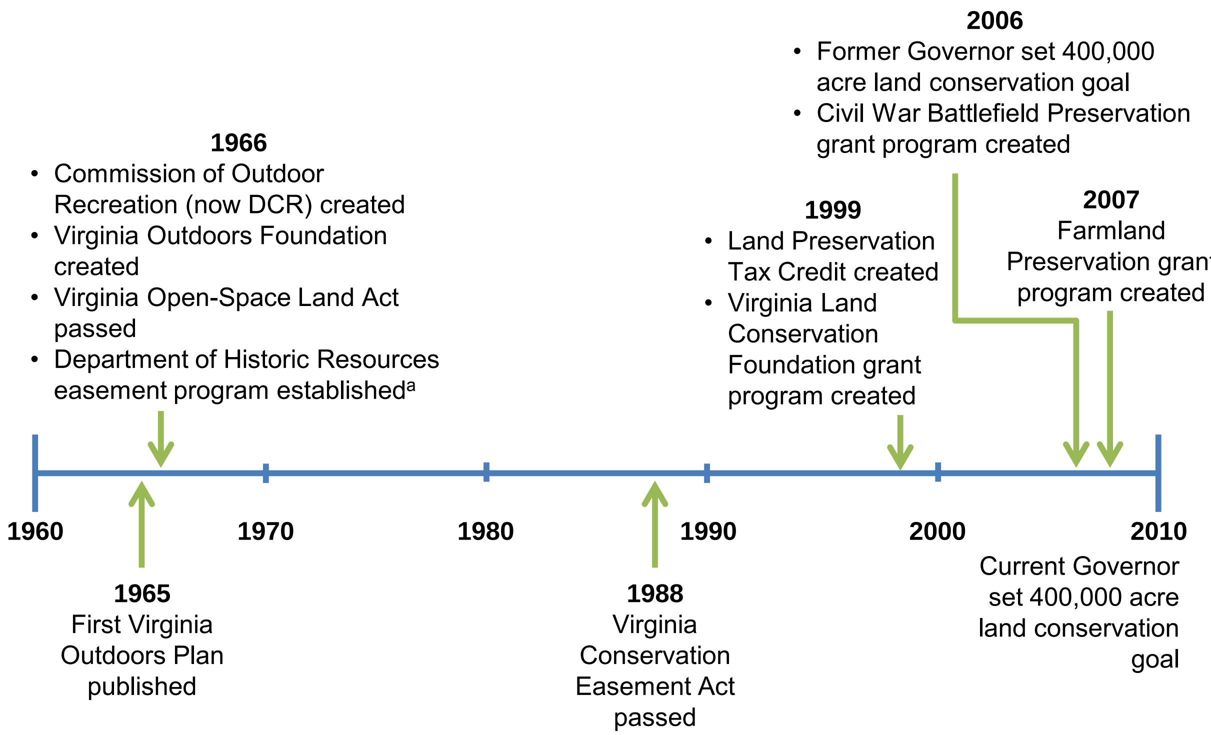
Land has been conserved in Virginia since the beginning of the 20th century. However, the State's role in land conservation has increased significantly in recent decades, largely due to the passage of the LPTC and land conservation bond funding. Roughly 15 percent of State land has been conserved to date.

Virginia's Land Conservation Approach Has Been Developed Over Decades and Frequently Studied in Recent Years

Virginia's role in land conservation has changed and ultimately expanded over time, evolving in recent decades from primarily a federal government activity to one involving State agencies, localities, regional park authorities, land trusts, and landowners. Early land conservation efforts were conducted largely through federal agencies and private funds from land trusts, with limited State funding. Virginia began formalizing its role in land conservation in the 1960s when the first *Virginia Outdoors Plan* was published and the General Assembly passed the Open-Space Land Act (Figure 2).

Following passage of the Conservation Easement Act in 1988, Virginia saw an increase in land trust activity because land trusts were granted the authority to hold conservation easements. In 1999, State support for land conservation expanded dramatically with the creation of the LPTC and VLCF grant program. The State's role in land conservation further expanded with the creation of the Civil War Battlefield Preservation grant program in 2006 and the Farmland Preservation grant program in 2007, as well as the statewide acreage goals set by recent governors.

Figure 2: Virginia's Role in Land Conservation Has Expanded in Recent Decades



[a] The Virginia Department of Historic Resources was originally known as the Virginia Historic Landmarks Commission.

Source: JLARC staff review of the *Code of Virginia*, interviews with State agency staff, and selected land conservation studies.

Several studies have attempted to identify stable sources of funding for land conservation in Virginia over the years. Since 1998, a total of ten legislative and administrative studies have addressed the topic of land conservation funding in Virginia. Table 6 details five key studies and their recommendations. Three studies recommended implementing a dedicated revenue source, such as a real estate transfer tax or water utility fee. Two studies discussed creating or expanding conservation tax incentives, and two studies recommended passing bonds for land conservation in Virginia.

Several of the recommendations from prior legislative and administrative studies have helped shape the funding methods Virginia currently uses. The recommendations related to the LPTC and bond funding have largely been implemented. By contrast, many of the recommendations for developing dedicated revenue sources have not been implemented, including recommendations for a deed recordation tax and a water utility fee. The recommendation to develop a document recording fee for land conservation was partially implemented, with the fee set at $1 rather than the recommended $10. Appendix C provides more detail on prior studies and the current status of their funding recommendations.

Table 6: Five Key Studies Have Made Recommendations Regarding State Land Conservation Funding in Virginia

Study author	Year	Funding recommendation
Chesapeake Bay Commission	2010	Pass State land conservation bond Increase LPTC annual cap and credit value
Natural Resources Funding Commission	2003	Implement water utility fee Implement document recording fee
Chesapeake Bay Commission	2001	Implement dedicated revenue source such as a real estate transfer tax or State land conservation bond [b]
Moss Commission	2000	Create income tax credit for conservation easements Create tax deduction for gain on sale of land or easements for open-space use
Joint Subcommittee Studying the Outdoor Recreation Needs of the Commonwealth	1988	Implement grantor's and recordation tax

[a] This was a recommendation for the Chesapeake Bay region, including Virginia.
[b] Report stated that these funding options are "enhancement opportunities," but did not call them recommendations.

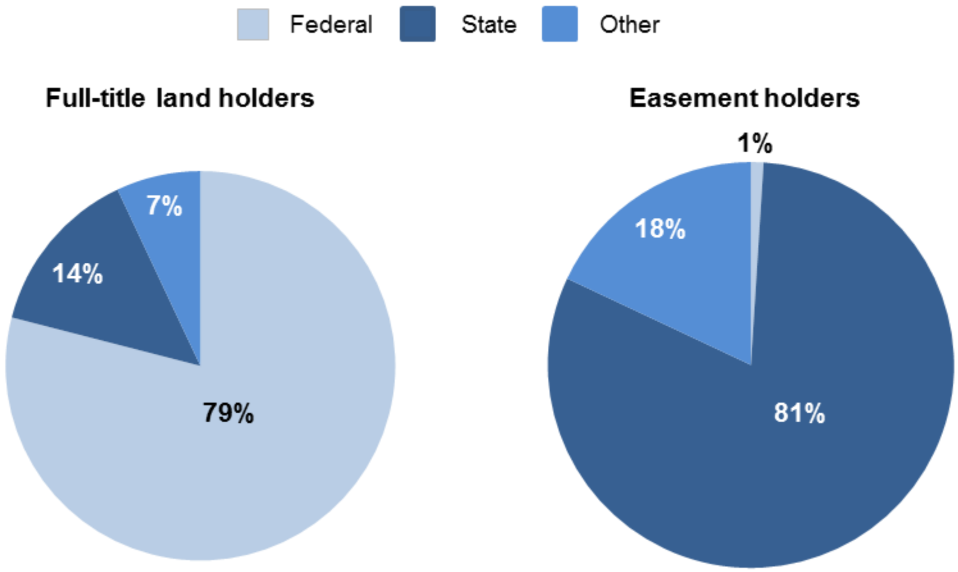
Source: JLARC staff analysis of legislative and executive branch studies.

About 3.8 Million Acres Have Been Conserved, Primarily by the Federal Government

Approximately 3.8 million acres of land have been conserved in Virginia to date, representing about 15 percent of the State's total acreage. This includes land under conservation easement and land owned by the federal government, State agencies, localities, and land trusts. As shown in Figure 3, the vast majority of conserved full-title land in Virginia is held by the federal government. Federal agencies hold almost two-thirds of conserved land in Virginia, nearly all as full-title holdings. For example, the U.S. Forest Service is the largest holder of conserved land in Virginia, holding the full title of nearly 1.7 million acres. By contrast, more than 80 percent of land under conservation easement is held by State agencies. Much of this land is protected by easements with the Virginia Outdoors Foundation.

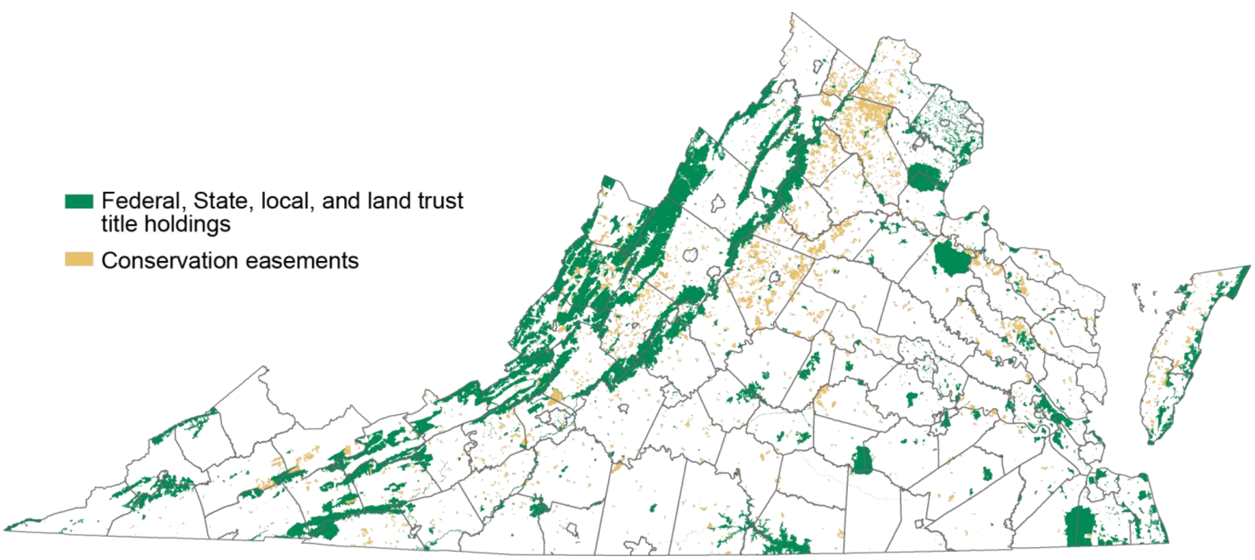
The amount of land conserved varies in different parts of the State. As shown in Figure 4, land currently conserved in Virginia is heavily concentrated in Northern Virginia and west of the Blue Ridge and Shenandoah mountains. Pockets of conserved land can also be found in eastern, southwestern, and central Virginia. Fewer acres have been conserved in Southside Virginia. Much of the land conserved in Northern Virginia is in the form of easements and landholdings by localities, while federally held forestland and parkland represent a substantial portion of land conserved in the western part of the State. (Appendix D lists the amount of land currently conserved in each Virginia locality.)

Figure 3: Most Conserved Full-Title Land in Virginia Is Held by the Federal Government, While State Agencies Hold Most Conservation Easements



Source: JLARC staff analysis of data provided by DCR.

Figure 4: Virginia Currently Has About 3.8 Million Acres of Conserved Land, Which Is Concentrated in Certain Parts of the State

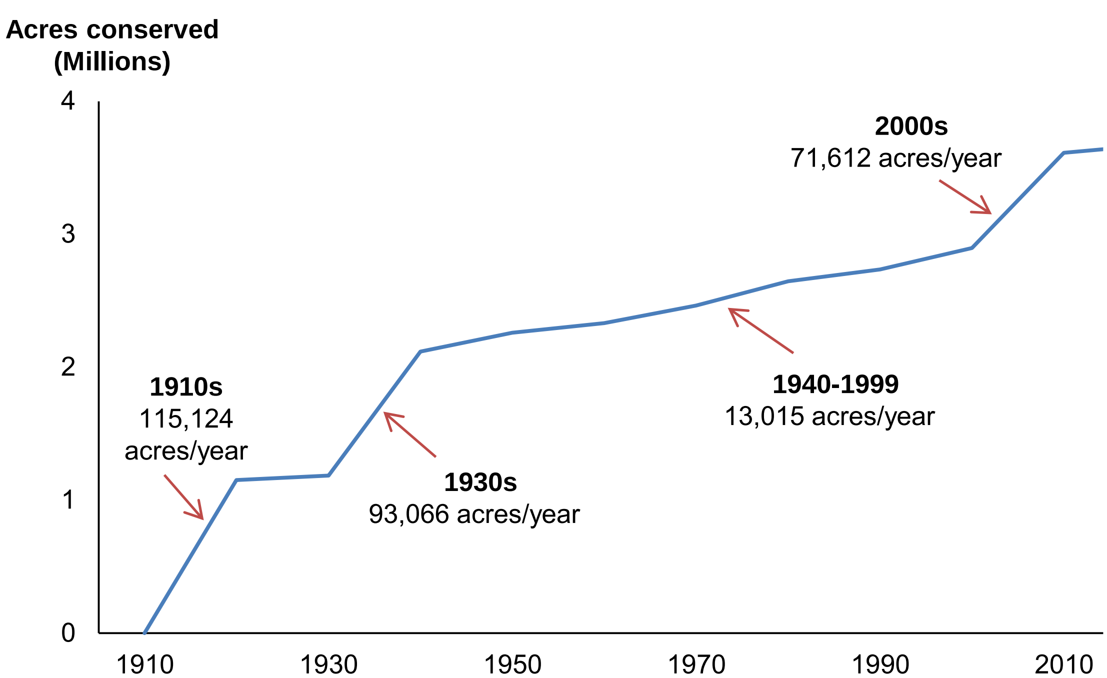


Source: Modified from map provided by DCR.

Prior to 1900, fewer than 100 acres had been conserved in the State (Figure 5). Beginning in the 1910s, the number of acres conserved grew rapidly as the federal government acquired a large number of acres for military use and created the George Washington National Forest. The conservation rate increased again in the 1930s as the federal government created the Jefferson National Forest and Virginia began acquiring land for State parks. From the 1940s through the 1990s, the number of acres conserved in the State grew at a relatively modest, but steady, rate. A third and final increase in Virginia's conservation rate occurred during the 2000s as a result of expanded State conservation efforts and resources.

Although Virginia conserved land at a high rate during the 2000s and met the former Governor's 400,000-acre goal, a decreased conservation rate in the last two years has slowed progress towards the current 400,000-acre goal. Virginia has conserved approximately 44,000 acres per year from 2010, when the current goal was established, through May 2012.

Figure 5: Number of Acres Conserved in Virginia Grew Over the Past Century, and Conservation Rates Increased in the 1910s, 1930s, and 2000s



Source: JLARC staff analysis of data provided by DCR.

At least two factors have contributed to Virginia's decreased conservation rate. One factor is that financial support for all of the State's land conservation programs has decreased in recent years as authorized bond funds have been spent, the LPTC was capped, and annual general fund appropriations for grant programs have decreased. A second factor is that landowners are more hesitant to donate land because the value of federal tax incentives for land conservation decreased in 2012 and the economic recession has resulted in lower property values. In addition, since the economic recession, banks have been more hesitant to subordinate loans for conservation easements (ensuring that the easement survives foreclosure of the mortgage), resulting in fewer new conservation easements.

Chapter 2

Virginia's Funding Approach Emphasizes the Conservation of Acreage Over Priority Land

In Summary

Virginia's approach to funding land conservation emphasizes conserving acreage over priority land. Nearly 90 percent of the State's total financial support for land conservation over the last decade was through the Land Preservation Tax Credit (LPTC), with much smaller amounts of funding allocated to grant and land acquisition programs. Funding for grant programs has been much less stable and more difficult to predict than financial support for the LPTC or State land acquisitions. The LPTC is cost efficient because it allows easements to be acquired and non-State resources to be leveraged, while grant and land acquisition programs have varied cost efficiency depending on their use. The LPTC has allowed the State to substantially increase its conservation rate and has conserved land with important conservation value, but it has more limited ability than grant and land acquisition programs to direct financial resources toward priority land or provide for public access to conserved land. How Virginia balances its financial support for land conservation among (i) tax incentives and (ii) grant and land acquisition programs involves a tradeoff between conserving acreage and conserving priority land.

To provide a baseline against which to compare dedicated revenue source options identified in this study, JLARC staff assessed Virginia's current approach to supporting land conservation using five criteria (Table 7). The criteria were developed based on prior studies, land conservation and tax literature, and interviews with key land conservation stakeholders. There are three financial criteria and two criteria related to achieving the State's land conservation goals. The assessment, however, did not include an evaluation of the need for additional land conservation or the adequacy of the State's financial support for land conservation.

Table 7: Criteria Chosen to Assess Virginia's Approach to Land Conservation

	Criteria	Definition
Financial criteria	Allocation	Percentage of the State's total financial support for land conservation allocated to (i) the LPTC, (ii) grant programs, and (iii) land acquisition programs
	Stability	Change over time in the amount of financial support for each program
	Cost efficiency	Relative extent to which each program conserves land by (i) minimizing total conservation costs and (ii) leveraging non-State funds
Criteria related to goals	Total acreage	Relative ability to direct financial support toward increasing the amount of land conserved
	Priority land	Relative ability to direct financial support toward conserving land identified as desirable for environmental, recreational, or other conservation purposes

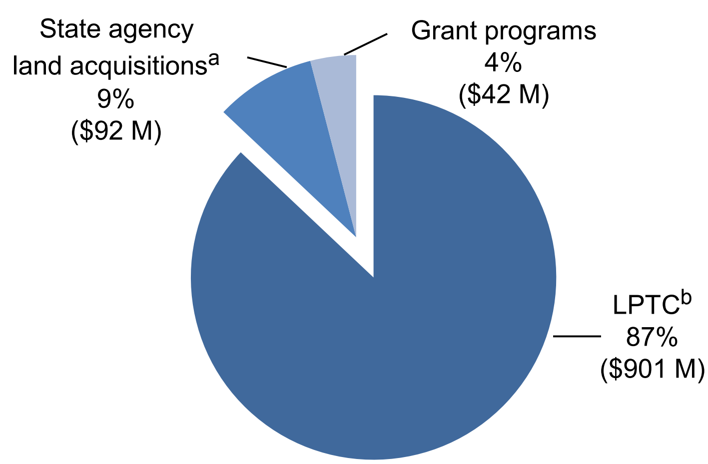
Source: JLARC staff analysis of prior studies, literature, and interviews with State agency and land conservation organizations.

NEARLY 90 PERCENT OF STATE FINANCIAL SUPPORT FOR LAND CONSERVATION HAS BEEN THROUGH TAX CREDITS

The allocation of the State's financial support among land conservation programs affects the State's cost of conserving land and the types of land conservation projects it can support. How funding for land conservation is balanced between (i) tax incentives and (ii) grant and land acquisition efforts can be measured by the percentage of total financial support for land conservation allocated to tax incentives, grant programs, and land acquisition programs.

The majority of State financial support for land conservation in the last decade was allocated to the Land Preservation Tax Credit (LPTC), with substantially less funding allocated to land acquisition and grant programs. As shown in Figure 6, the $901 million in tax credits claimed from TYs 2002 through 2011 accounted for approximately 87 percent of total State financial support for land conservation during this period. State agency land acquisitions accounted for approximately nine percent of the State's total financial support for land conservation, while grant programs accounted for just four percent.

Figure 6: LPTC Has Accounted for 87 Percent of State Financial Support for Land Conservation (2002-2011)



[a] Excludes (i) $6 million in bond funds that have been authorized but not spent; (ii) interest paid on land conservation bonds because data are not available on the amount of interest paid to date, although Treasury staff estimate that a total of more than $34 million in interest will be paid over the 20-year bond terms on debt authorized since FY 2002; and (iii) expenditures for the development of State parkland (e.g., construction of cabins).
[b] Excludes $120 million in unclaimed tax credits that may still be claimed.

Source: JLARC staff analysis of data provided by State agency staff.

GRANT PROGRAMS HAVE RECEIVED LESS STABLE FINANCIAL SUPPORT THAN THE LPTC AND STATE LAND ACQUISITIONS

Stable and predictable financial support for land conservation programs allows landowners, government entities, and land trusts to strategically plan for projects to be completed in specific years. As discussed in Chapter 1, stakeholders have stated that Virginia's grant and land acquisition programs lack a stable revenue source which can enable long-term planning. Stable funding for land conservation is important because projects typically take years to complete. Landowners often wait until a donation or sale will provide the most tax benefits or the highest sale price, and they frequently must find funding from multiple sources. Landowners can phase in projects as funding becomes available, but want assurance that sufficient funding will be available in future years to complete the project.

LPTC Has Received Relatively Stable Financial Support

Compared to Virginia's grant and land acquisition programs, the LPTC has received relatively stable and predictable financial support. As shown in Table 8, the amount of annual financial support available through the tax credit fluctuated relatively little from 2002 through 2011. The average annual percentage change for the LPTC was four percent. The largest percentage change in financial support occurred between 2006 and 2007, when the program was capped at $100 million and the annual number of available credits decreased by approximately 27 percent, from an average of $137 million for TYs 2002 through 2006.

Table 8: Financial Support for the LPTC Has Been Relatively Stable, While Funding for Grant Programs Has Been Unstable and Difficult to Predict (2002-2011)

Program	Average annual percent change in funding[a]	Number of years annual percent change was more than 50%	Number of years funding trend changed direction
Land Preservation Tax Credit	4%	0	2
Land acquisitions[b]	26%	2	3
Grant programs	148%[c]	5	4

[a] Calculated for available funding rather than actual expenditures. For example, because the amount of LPTC credits available prior to TY 2007 was not limited, there was no annual change in financial support available through the LPTC.

[b] Excludes any unexpended bond funds remaining from a 1992 general obligation bond which authorized $36 million for land acquisition. Also excludes $12 million spent on land acquisition from dedicated revenue sources since agencies typically had discretion over when and how much of these funds was used for land conservation.

[c] Excludes the percent change in funding from 2003-2004, when funding increased from $0 to $1.5 million.

Source: JLARC staff analysis of data provided by State agencies.

Landowners have generally been able to predict the amount of LPTC tax credits available each year. Prior to the cap on the total number of credits issued each year, all applicants who met the program's eligibility requirements knew that they would be able to receive tax credits. Since then, landowners know that $100 million in tax credits will be available each year, with this amount adjusted annually for inflation to allow the value of financial support to remain constant as the cost of living increases. Because the LPTC issues credits in the order that donors apply, landowners who want to donate land can apply for tax credits early in the tax year to increase the likelihood they will be accepted that year. After all available credits have been awarded, eligible landowners are placed in a queue to receive tax credits the following year.

The impact of the LPTC on the State's general fund has varied substantially from year to year.

While the amount of financial support provided each year through the LPTC has been relatively stable and predictable, the impact of the LPTC on the State's general fund has varied substantially from year to year. Individual taxpayers can claim up to $100,000 of credits each year and have ten years after issuance to claim credits. Furthermore, the amount of credits issued before the annual $100 million cap was implemented varied widely. Consequently, the amount of credits claimed annually has ranged from approximately $6 million in TY 2002 to $172 million in TY 2006.

State Agencies Have Received Relatively Stable Funding for Land Acquisitions From Bonds

Like the LPTC, State agencies have received relatively stable and predictable funding for land acquisitions. Legislation authorizing bond initiatives allows State agency staff to know how much total funding will be available for land conservation projects. Agencies then expend funds from bond issuances against capital projects. The amount of available bond funds has gradually decreased each year as agencies have drawn on authorized funds. The average annual percentage change in bond funds available was 26 percent, reflecting the rate at which agencies drew on authorized funds and the authorization of an additional bond initiative in 2008.

While bond initiatives have provided relatively stable and predictable funding over the last decade, they are only one-time authorizations of debt. Less than $6 million of authorized bond funds remained for land conservation as of May 2012, including approximately $3 million that has been obligated. Once these funds are spent, new bond initiatives would be needed to authorize additional funds.

Grant Programs Have Received Relatively Unstable Funding, Making Long-Term Conservation Planning Difficult

Compared to financial support for the LPTC and State agency land acquisitions, State funding for land conservation grant programs has been highly unstable and difficult to predict. The average annual percentage change in funding for all grant programs was 148 percent, substantially higher than four percent for the LPTC and 26 percent for State land acquisitions (Table 8, above). The annual percentage change in funding for grant programs was more than 50 percent on five occasions, and the funding trend changed direction four times. These aggregate fluctuations in total grant funding are reflected in annual funding variations for individual grant programs. For example, annual general fund appropriations for Virginia Land Conservation Foundation (VLCF) grants decreased by approximately 80 percent between FYs 2005 and 2006, from $9.4 million to $1.9 million.

The lack of stable, predictable funding for land conservation grant programs has hindered State agencies' ability to take advantage of conservation opportunities as they arise. State agency staff reported that Virginia has missed opportunities to conserve land with important conservation benefits because there was no guarantee that sufficient funding would be available in future years. In these cases, landowners decided not to conserve their land and may have sold it to other individuals or developers.

State agency staff reported that Virginia has missed opportunities to conserve land with important conservation benefits because there was no guarantee that sufficient funding would be available in future years.

Alternatively, unexpected grant funding increases were difficult to award in the most strategic manner. For instance, the Department of Historic Resources (DHR) received a substantial increase in funding for its Civil War Sites Preservation Fund grants program between FYs 2007 and 2008, from $190,000 to over $5 million. Because agency staff could not anticipate this funding increase, they had insufficient time to strategically plan projects with landowners to be funded that year.

LPTC APPEARS TO HAVE BEEN MORE COST EFFICIENT THAN SOME GRANT AND LAND ACQUISITION PROGRAMS

Cost efficiency is critical to minimizing the State's cost of conserving land. Two factors affect the cost efficiency of land conservation programs. One factor is the ability to minimize total conservation costs by acquiring easements, which costs less than acquiring the full legal title. A second factor is the ability to leverage private, local, and federal resources to minimize the State's share (and, ideally, all government entities' share) of the total cost.

Public Access

The level of public access to conserved lands can vary from (i) no public access, to (ii) limited public access, such as during certain days of the year or for certain activities, to (iii) regular public access, such as daily access to a State park. This report typically uses the term "public access" to refer to the provision of regular public access.

JLARC staff's assessment of cost efficiency measures only the *cost* of conserving land, by acquiring either the full title or a conservation easement. It does not measure the conservation *benefits* that result from conserving a property. While acquiring a conservation easement costs less than acquiring the full title, easements are not always able to provide certain conservation benefits associated with acquiring the full title. These benefits include the ability to provide regular public access and actively manage the land and its conservation assets. (A common exception to this is historically significant land under conservation easements held by DHR. These easements require some form of public access and establish a framework for managing the property.) As a result, depending on the purpose of a conservation project, it may be necessary to conserve land by acquiring the full title even though project costs will be higher.

LPTC Has Been Cost Efficient Because It Allows Easements to Be Acquired and Non-State Resources to Be Leveraged

The LPTC is an efficient conservation method partly because it primarily incentivizes the donation of easements rather than acquisition of the full legal title. Data from the Virginia Department of Taxation (TAX) shows that over 2,700 donations through the LPTC have been easements, or approximately 98 percent of all donations since the credit was established. Since easements are limited to conveying development rights, they cost less than acquiring full ownership rights.

The $1.2 billion in tax credits issued since TY 2002 has conserved more than 560,000 acres with an appraised fair market value of approximately $2.7 billion.

In addition to limiting total costs, the LPTC effectively leverages private and federal resources to limit the State's share of total costs. Virginia provided tax credits equal to 50 percent of fair market value through TY 2006 and has provided tax credits equal to 40 percent of fair market value since then. The remaining share of fair market value is leveraged through private landowner donations and a federal tax deduction for donated land. As a result, the $1.2 billion in tax credits issued since TY 2002 has conserved more than 560,000 acres with an appraised fair market value of approximately $2.7 billion. Appendix E lists the 40 localities in which the highest amount of LPTC credits have been issued to landowners since the program began.

Depending on Their Use, Grant and Land Acquisition Programs Appear to Have Been More or Less Cost Efficient Than the LPTC

The cost efficiency of individual grant and land acquisition programs has varied depending on the extent to which easements are purchased and non-State resources are leveraged. While the LPTC primarily conserves easements, the percentage of funds for grant and land acquisition programs used to acquire easements ranged from approximately two percent through bond purchases to 100 percent through State matching funds for local PDR programs. Consequently, individual grant and land acquisition programs reduced the total conservation costs to varying degrees. Importantly, while easements typically provide some form of public access to land conserved for historic purposes, much of the land conserved through grant and land acquisition programs must be acquired in full title to ensure regular public access. For example, land for State parks and wildlife management areas is generally acquired in full to provide the desired level of public access.

Although data and resource constraints precluded a comprehensive assessment of cost efficiency, available data indicate that some grant programs have been able to leverage as many non-State funds as the LPTC. For instance, data provided by VDACS staff indicates that $5.9 million awarded by VDACS and other State grant programs for farmland preservation leveraged approximately $8.5 million in local and federal funding. Therefore, the State's cost represented approximately 41 percent of the total purchase price for agricultural easements conserved through the grant program. This ability to leverage 59 percent of the total purchase price is comparable to the ability of LPTC tax credits to leverage 60 percent of the fair market value of land.

Although some grant programs have been able to leverage as many non-State funds as the LPTC, only one appears to be able to leverage as many private funds. Most funds leveraged by grant and land acquisition programs are from other public sources, such as localities and federal grant programs. One exception is the Civil War Sites Preservation Fund, through which $6.9 million in State grants leveraged over $22 million from non-profits and corporations.

Land Acquisitions Have Relatively Low Cost Efficiency in the Short Term, but May Become More Cost Efficient as Economic Benefits Are Realized. The cost efficiency of fee-simple land acquisitions by State agencies appears to vary depending primarily on whether bond funds are used and the extent to which non-State funding is leveraged. Nearly 90 percent of the $92 million in land acquisition expenditures by State agencies over the last decade has been funded with bond proceeds. State bonds entail debt service costs. Treasury staff estimate that an average of $1.40 is required to pay the principal and interest over 20 years on each dollar authorized by the State's last three bond initiatives for land conservation, or a total of more than $34 million in interest on the $86.5 million authorized. In addition, land acquired by State agencies or other governmental entities is not subject to local property taxes.

State agency land acquisitions also typically have leveraged non-State funds at a lesser rate than most other land conservation programs. In general, fewer local, federal, and private funds appear available to leverage land acquisitions for State parks, State forests, and wildlife management areas. However, one exception to this is the acquisition of natural area preserves by the Virginia Department of Conservation and Recreation (DCR). According to DCR staff, the agency has leveraged approximately $32 million in federal, local, and private funds with $17 million in bond funds authorized for natural area preserves since 2002.

According to land conservation stakeholders and State agency staff, land acquisitions have the potential to become more cost-efficient over time as the economic benefits of a conservation project are realized. For example, the acquisition of land for State parks will generate economic gains from recreational and tourist activity. Economic benefits may also improve the cost efficiency of grant programs that support the purchase of easements or land titles at full cost. Land acquired in full may also carry lower stewardship costs over the long term when compared to land held under easement, particularly if an easement requires extensive monitoring and legal enforcement. Finally, a full accounting of the costs and benefits of full-title land acquisitions would reflect the economic value of certain environmental benefits associated with such conservation projects. For example, water quality improvements resulting from land conservation projects can help reduce water treatment costs.

Grant and Land Acquisition Programs Have Shown a Greater Ability to Support Local Conservation Programs and Leverage Federal Grant Funds. While the LPTC has contributed to the growth of private land trusts in Virginia, grant and land acquisition programs have shown a greater ability to build local conservation programs and leverage federal grants. For instance, VDACS staff reported that the State's matching funds for local PDR programs incentivized several localities to establish and fund their own programs. Approximately 70 percent of funds leveraged by State grant and land acquisition programs have been from localities or federal grant programs such as the Forest Legacy Program and the Land and Water Conservation Fund.

Primarily due to insufficient cash matching funds, Virginia returned approximately $1 million of a $2 million allocation from the Farm and Ranchland Protection Program (FRPP) to the U.S. Department of Agriculture in FY 2011 and $450,000 of a $4.6 million allocation in FY 2012. These unexpended federal funds, if they could have been leveraged, may have been able to improve the cost efficiency of some of the State's grant programs. Staff at the U.S.

Department of Agriculture noted that at least one other state has been able to request and receive approximately $7 million in FRPP funding because they could show that there were state funds to match that amount.

LPTC HAS HAD GREATER ABILITY TO INCREASE TOTAL ACREAGE, WHILE GRANT AND LAND ACQUISITION PROGRAMS HAVE HAD GREATER ABILITY TO CONSERVE PRIORITY LAND

Virginia has a variety of land conservation goals. Some of them focus on achieving a high conservation rate, while most goals require directing financial support toward priority land. An effective funding approach can support the full range of land conservation projects that can meet these differing State goals and priorities.

Virginia Has a Variety of Land Conservation Goals

In addition to the current Governor's goal to increase the total land conserved by 400,000 acres, State agencies have also set goals to conserve certain priority land. For instance, DCR has a goal of meeting the growing demand for State parks. Based on current State park acreage–including undeveloped State parkland–Virginia is one of only six states that do not meet a standard DCR adopted of conserving ten acres of State parkland per 1,000 people. Virginia would need to conserve an additional 9,500 acres statewide currently, or 18,000 acres by 2020, to meet this standard, with the deficit of park acreage concentrated in Northern Virginia and Hampton Roads. DCR staff report that they plan to transition to a more qualitative standard based on results from the *Virginia Outdoors Survey* to account for parkland owned by other government entities and for State park selection criteria such as the presence of water resources and other natural features.

Virginia Outdoors Survey

DCR conducts this statewide survey every five years to assess Virginians' perceptions of outdoor recreation resources, estimate participation in and demand for various recreational activities, and allow for citizen input into the *Virginia Outdoors Plan*.

Additionally, the Virginia Department of Game and Inland Fisheries (DGIF) has goals to conserve other types of land that provide public access. For example, the 2006 *Virginia Outdoors Survey* found a projected deficit (based on the available supply of land in 2006) of

- about 248,000 acres of hunting land in 2010 and 319,000 acres by 2020 in Northern Virginia; and
- nearly 9,000 acres of lake, river, and bay access in 2010 and 11,000 acres by 2020 in the Rappahannock-Rapidan region.

Virginia has also been working toward, but is not on track to meet, a Chesapeake Bay Program goal to conserve high priority forestland in the Chesapeake Bay watershed. Though Virginia con-

High-Priority Forestland for Chesapeake Bay Program

The Virginia Department of Forestry has identified two million acres of high-priority forestland in the State using GIS analysis. This analysis considered factors such as biological integrity, impact on water quality, presence of large contiguous tracts of forestland, and threat of development.

served over 170,000 acres of forestland from TYs 2007 through 2011, only 55,000 of these acres are considered to be of high-priority based on a ranking by DOF. Virginia would need to increase this annual rate of conserving high-priority forestland by 107 percent to meet the goal of conserving 315,000 high-priority acres by 2020.

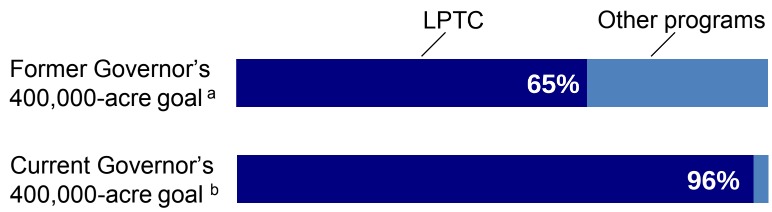
Finally, State agencies have identified other goals that represent additional land conservation opportunities, including the conservation of

- natural areas to protect over 600 sites DCR has identified as containing significant natural communities and rare plant and animal species;
- wildlife habitats to protect over 900 species that DGIF has identified as rare or threatened;
- farmland through local PDR programs;
- over 100 Civil War battlefields that the federal Civil War Sites Advisory Commission has identified as high priority;
- historically significant land representing the diversity of the State's historic resources;
- buffer areas around existing wildlife management areas to limit noise disturbances to nearby residents and encroachment on adjacent land; and
- large tracts of land to maximize conservation benefits.

LPTC Has Increased Virginia's Conservation Rate, but Has Limited Ability to Direct Financial Support Toward Other Goals Related to Priority Land or Providing Public Access

The LPTC has been able to efficiently increase the total acreage conserved by acquiring primarily easements and by leveraging non-State resources, as previously discussed. The total number of acres conserved in Virginia increased 24 percent over the last decade, from approximately 3 million in TY 2002 to 3.8 million acres in TY 2011. Approximately 76 percent of these acres, or nearly 560,000, were conserved through the LPTC. The LPTC has also been critical to meeting the former Governor's goal of conserving 400,000 acres during his term and to working toward the current Governor's 400,000-acre goal (Figure 7). The LPTC accounted for nearly two-thirds of the 424,000 acres conserved toward the former Governor's goal and more than 113,000 of the 117,818 acres conserved toward the current goal.

Figure 7: LPTC Has Accounted for Majority of Acres Conserved Toward Past and Current 400,000-Acre Goals (August 2012)



[a] During the former Governor's term, 424,000 acres were conserved.
[b] As of August 2012, approximately 118,000 acres had been conserved towards the current Governor's goal of conserving 400,000 acres by the end of his term in 2014.

Source: JLARC staff analysis of data provided by TAX and Virginia Performs.

LPTC Does Not Prioritize Tax Credits for Land Identified as Conservation Priorities. A limitation of the LPTC is that it does not direct financial support toward specific land identified as conservation priorities. Like nearly all land conservation tax credits, the LPTC issues credits on a first-come, first-served basis for properties that meet broad eligibility criteria. Consequently, there is no guarantee that land conserved through the tax credit will be a conservation priority for State agencies or land trusts.

State agency and land trust staff have some ability to direct tax credits toward priority land, but this ability appears hindered because credits are awarded on a first-come, first-served basis for a broad range of conservation purposes. State agency and land trust staff are able to use education and outreach efforts to encourage owners of specific land to donate. For instance, the Virginia Outdoors Foundation designates priority areas of the State as "Special Project Areas" toward which conservation organizations should direct resources. However, tax credits are not limited to landowners within these areas since many donors also learn about tax credits from other landowners, the media, and other sources. State agencies and land trusts also have restrictions on the types of donations they receive, and report turning down donations that do not meet their conservation standards. While many land trusts base their standards on localities' conservation priorities and the Virginia Conservation Lands Needs Assessment mapping tool, there is no guarantee that land trusts have the same priorities as State agencies.

It also is difficult for the LPTC to conserve contiguous tracts of land that maximize conservation benefits. For instance, large tracts of forestland maximize air and water quality benefits. Additionally, contiguous land corridors provide better protection for some wildlife species, as well as more scenic and recreational benefits compared to small, isolated parcels of land surrounded by development.

The LPTC has helped conserve a substantial amount of land with important conservation value, and much of this land has met certain conservation priorities. For example, more than 70 percent of the conserved acres receiving LPTC credits have been within the Chesapeake Bay watershed, contributing to the Bay's protection. As discussed previously, several of Virginia's land conservation goals involve conserving land in the Bay watershed. In addition, land conserved through the tax credit is concentrated in the northern portion of the State, and includes localities such as Loudoun and Fauquier that have experienced relatively high population growth and development during the last decade.

The majority of acres donated through the LPTC, or 75 percent, claimed scenic open space conservation benefits.

While the LPTC has conserved land with important conservation value, the full extent to which these acres were State priorities is not known because agencies do not assess whether land conserved through the LPTC meets the State's goals and priorities. The tax credit has incentivized the donation of certain types of land more than others. The majority of acres donated through the LPTC, or 75 percent, claimed scenic open space conservation benefits. As previously discussed, however, most State agencies' land conservation goals and priorities focus on other conservation benefits that are claimed less often. For instance, approximately 30 percent of acres conserved through the LPTC claimed natural habitat and biological diversity benefits, and just five percent claimed outdoor educational and recreational benefits.

LPTC Has Limited Ability to Conserve Land Accessible to the Public. A second constraint of the LPTC is that it has limited ability to conserve land accessible to the public. Acquiring the full title is often necessary to provide regular public access because easements allow land to remain in private ownership and many landowners are not willing to allow public use of their land. However, landowners typically want more compensation for the full title than a 40 percent credit available under the LPTC, making the LPTC an insufficient incentive. According to the *Virginia Outdoors Plan*, easements alone will not meet the State's increasing need for accessible public land such as State parks, State forests, and wildlife management areas.

Data provided by State agencies indicate that a small amount of land conserved through the LPTC alone provides for public access. For example, data from TAX shows that only two percent of all donations, or 57, were of the full title since the credit was established. Although the LPTC can be used in combination with other sources of financial support to compensate landowners for more than 40 percent of the fair market value, data from TAX indicates that this is rare. Bargain sales occurred in 156 cases from TYs 2000 to 2011, or in six percent of all donations made through the LPTC.

Grant and Land Acquisition Programs Have Varying Ability to Meet Acreage Goals, but Relatively Greater Ability to Direct Funding Toward Priority Land

While Virginia's grant and land acquisition programs have varying abilities to efficiently meet total acreage goals by limiting the State's conservation costs, as previously discussed, they have a greater ability than the LPTC to direct resources toward conserving priority land. While the LPTC is limited to incentivizing private land donations, grant and land acquisition programs are able to compensate landowners for more than 40 percent of the fair market value and build local and federal support for land conservation, as previously discussed. Therefore, grant and land acquisition programs are often needed to conserve land that provides additional conservation benefits, such as regular public access, and other land for which owners want more compensation than the tax credit can provide.

Additionally, grant and land acquisition programs have a greater ability to direct resources toward specific land because they prioritize applications that best meet their criteria. For instance, the VLCF uses a scoring system to rank projects against a variety of criteria that include

- identification in government documents such as the *Virginia Outdoors Plan*;
- property characteristics, such as the threat of development;
- conservation benefits, such as the provision of public access; and
- other criteria, such as the amount of funds leveraged.

VLCF grants are awarded only to those projects deemed a priority by an interagency panel and the grant program's Board of Trustees. Additionally, agencies have been able to directly acquire land for State parks, wildlife management areas, and other State priorities using bond funds.

Since grant and land acquisition programs have a greater ability than tax incentives to direct resources toward priority land, they are better able to acquire certain conservation benefits. Table 9 lists examples of priority land and their resulting conservation benefits. For instance, strategically located State parks ensure that recreational opportunities are available throughout the State, and wildlife management areas provide access to land for hunting and preserve wildlife habitat.

As a result of the tax credit's design and relatively limited financial support for grant and land acquisition programs, Virginia has missed opportunities to conserve priority land, as illustrated in the following example:

> ***Case Study: Missed Conservation Opportunity***
>
> *A large property was placed on the market that had the potential to be a wildlife management area in a region near Northern Virginia which had an estimated deficit of 38,000 acres of hunting land in 2010. The property contains several miles of streams supporting native fish species and provides scenic views of Shenandoah National Park. The owner wanted more compensation than the LPTC could provide, however, and funding from grant or land acquisition programs was not available to purchase the property. Consequently, portions of the property have now been divided and sold.*

Table 9: Several Types of Priority Land Provide Important Conservation Benefits for Virginia

Example of priority land	Conservation benefits
State parks	Contribute to the State's economy Provide outdoor recreational and educational opportunities such as hiking and camping
Civil War battlefields	Attract tourists for the 150th anniversary of the Civil War Preserve a part of Virginia's and the nation's heritage
Wildlife management areas	Improve public access to land for hunting and other recreational activities Maintain ecosystem biodiversity by preserving the natural habitat of species
Buffer areas	Limit noise disturbances to residents near State parks, wildlife management areas, and other land Limit development on adjacent land Protect water quality

Source: JLARC staff analysis.

STATE'S APPROACH TO SUPPORTING LAND CONSERVATION EMPHASIZES ACREAGE OVER PRIORITY LAND

Table 10 summarizes the assessment of Virginia's approach to supporting land conservation discussed above. The relatively high share of land conservation revenue allocated to the LPTC has the effect of emphasizing the conservation of acreage over priority land. The LPTC has been a relatively stable source of financial support for land conservation, and has been a cost-efficient method of conserving land. These features of the tax credit have enabled Virginia to increase the total number of acres conserved by 24 percent over the last decade. Grant and land acquisition programs have contributed to the total amount of land conserved in Virginia, but they have varied in their cost efficiency. Funding for grants has been relatively low, unstable, and difficult to predict. While the LPTC has been a stable and cost-efficient source of financial support that has helped conserve land with important conservation value, compared to grant and land acquisition programs it has a low ability to direct financial support towards conserving priority land, including land with public access.

This assessment of Virginia's approach to funding land conservation is generally consistent with the opinions of land conservation stakeholders and State agency staff. The LPTC is regarded with near unanimity within the land conservation community as a cost-efficient tool to promote land conservation donations. However, some of these individuals also expressed concern that Virginia has limited ability to conserve priority land, such as land with public access, because a high percentage of its financial support for land conservation is from the LPTC. For example, one stakeholder stated that Virginia's approach to supporting land conservation does not allow for the planning needed to obtain the highest value for the State's expenditures.

Table 10: Virginia's Land Conservation Programs Differ in Their Financial Allocation, Financial Stability, Cost Efficiency, and Ability to Direct Support Toward Goals (2002-2011)

	Financial criteria			Criteria related to goals	
	Allocation	**Stability**	**Cost efficiency**	**Total acreage**	**Priority land**
LPTC	High	High	High	High	Low
Land acquisitions	Low	High	Varies	Low	High
Grants	Low	Low	Varies	Varies	High

Note: The criteria for cost efficiency, total acreage, and priority land were measured relative to other conservation programs.

Source: JLARC staff analysis.

How Virginia balances its financial support for land conservation among (i) tax incentives and (ii) grant and land acquisition programs involves a tradeoff between conserving acreage and conserving priority land. The appropriate balance is a policy decision for the General Assembly and will depend on the availability of revenue from different sources, the types of land conservation projects the State wishes to support, the short- and long-term costs and benefits of land conservation, and other factors. The State's approach to supporting land conservation has evolved over several decades, and Virginia may benefit from examining whether this approach adequately aligns with its land conservation goals and priorities.

Chapter 3

Other States Tend to Rely Less on Tax Credits to Support Land Conservation

In Summary

Virginia provides an average amount of financial support for land conservation and conserves land at a moderate rate compared to other states. However, Virginia's approach to funding land conservation primarily through tax credits differs from most other states. In contrast to Virginia, the majority of states do not have land conservation tax credits, relying solely on grants and land acquisitions to support land conservation. For example, Pennsylvania relies exclusively on grants and land acquisitions supported by bonds and dedicated funds for land conservation. States that have land conservation tax credits typically rely on them to a lesser extent than Virginia. For example, North Carolina takes a relatively balanced approach to funding land conservation, while Maryland relies primarily on grant and land acquisition programs supported partly with dedicated funds. Compared to states with tax credits, Virginia's LPTC is among the larger and more valuable credits in the nation. States also use a wide variety of dedicated revenue sources to support land conservation programs.

Like Virginia, many states have programs that permanently protect land through conservation. States use a wide range of funding methods and programs to support land conservation. States differ in the amount of financial support they provide for land conservation, the rate at which land is conserved, and the specific funding methods and programs used. As discussed in Chapter 2, Virginia relies primarily on tax incentives while making limited use of grants, land acquisitions, and dedicated revenue sources. JLARC staff reviewed the funding methods and programs used in selected other states to provide context for Virginia's approach to land conservation and to identify potential dedicated revenue sources that may be viable in Virginia. More detailed information about JLARC staff's reviews of other states can be found in Appendix B.

COMPARED TO OTHER STATES, VIRGINIA PROVIDES AN AVERAGE AMOUNT OF FINANCIAL SUPPORT FOR LAND CONSERVATION AND CONSERVES LAND AT A MODERATE RATE

The amount of land a state conserves is a policy choice that depends on factors such as its population density, demand for conserved land, state geography and natural resources, and amount of state financial support provided for land conservation. Comparing Virginia's financial support for land conservation on a per capita basis to that of other states provides a useful frame of reference. Comparing Virginia's rate of land conservation also provides con-

Trust for Public Land (TPL) Data

TPL, a national non-profit, manages the only publicly available and comprehensive national database on land conservation funding. Data for all states is available from 1998 to 2005. Updated data is available for 26 states from 1998 to 2008. Although this data is seven years old, JLARC staff are presenting 1998-2005 data to provide a comparison of land conservation funding levels across all states. TPL data includes all financial support provided by a state through tax credits, bonds, general appropriations, and dedicated revenue sources.

text to help understand the emphasis Virginia has placed on conserving land in recent years.

Virginia Has Historically Provided an Average Amount of Financial Support for Land Conservation

Historically, Virginia has provided an amount of State financial support for land conservation near the national average. According to data from the Trust for Public Land (TPL), Virginia provided an annual average of $4.62 per capita in State financial support for land conservation between 1998 and 2005. During this period, the national average for per capita state spending on land conservation was $4.63. As shown in Figure 8, Virginia's spending was within the range of $1 to $10 that includes 29 states. Six states provided more than $10 per capita, while 15 provided less than $1 per capita for land conservation. For example, Delaware provided the highest amount of annual financial support per capita, at $29.54. North Dakota provided no state financial support for land conservation during this period.

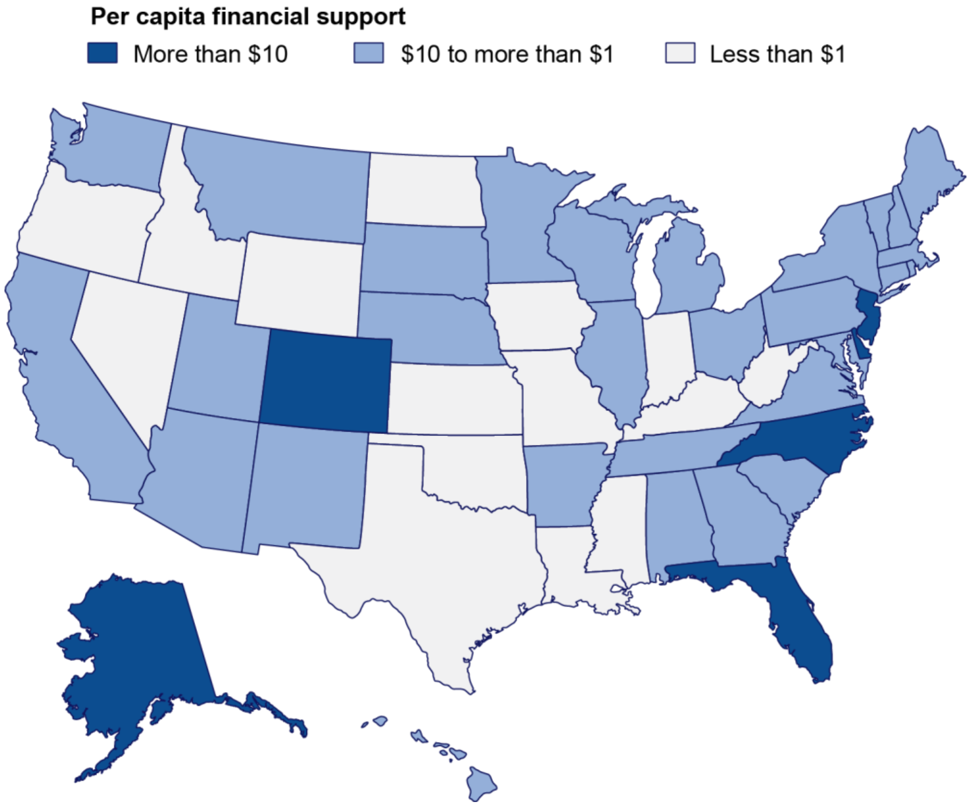
The amount of financial support Virginia provided for land conservation between 1998 and 2005 was also comparable to many surrounding states. Maryland, Pennsylvania, Georgia, South Carolina, and Tennessee also provided between $1 and $10 in per capita financial support for land conservation during this period. However, several surrounding states provided substantially different amounts of financial support compared to Virginia. For example, North Carolina provided more than $10 per capita, while West Virginia provided less than $1 per capita.

The amount of financial support Virginia provides for land conservation may have increased relative to other states since 2005. TPL data show that 12 of 26 states decreased their financial support for land conservation between 2005 and 2008, including North Carolina and Georgia. In addition, though Virginia's LPTC was capped at $100 million in 2007, the creation of several new grant programs, the passage of a Virginia Public Building Authority bond in 2008, and increases in the LPTC cap through annual inflationary adjustments may have offset reductions in financial support due to the cap.

Virginia Conserves Land at a Moderate Rate

Compared to other states, Virginia has historically conserved land at a moderate pace. TPL data show that from 1998 through 2005, Virginia ranked 26th nationwide for the average number of acres conserved per capita each year (Table 11). During this period, Virginia conserved an average of 49 acres annually per 10,000 individuals. The national rate had a very wide range, from more than 1,100 acres in Maine, down to nine acres in Ohio. Although certain

Figure 8: Virginia's Per Capita Financial Support for Land Conservation Is Comparable to Many Other States



Source: JLARC staff analysis of data provided by the Trust for Public Land, 1998-2005.

Table 11: Virginia's Land Conservation Rate Ranked 26th Nationally Between 1998 and 2005

National ranking		State	Annual number of acres conserved per 10,000 persons (average)[a]
Top Ten	1	Maine	1,143
	2	Alaska	1,088
	3	South Dakota	899
	4	Montana	802
	5	North Dakota	619
	6	New Hampshire	429
	7	Vermont	324
	8	Colorado	229
	9	Delaware	139
	10	Hawaii	137
Middle	25	South Carolina	51
	26	**Virginia**	**49**
Bottom	49	Kansas	10
	50	Ohio	9

[a] Includes acres conserved with both federal and state financial resources.

Source: Data provided by the Trust for Public Land from 1998 to 2005.

states with higher conservation rates have smaller populations than Virginia, more populous states—including several nearby states—also conserved land at a faster rate than Virginia. For example, Maryland conserved an average of 95 acres per 10,000 individuals during this period, and North Carolina conserved 83 acres.

VIRGINIA RELIES MORE HEAVILY ON TAX CREDITS TO SUPPORT LAND CONSERVATION THAN OTHER STATES

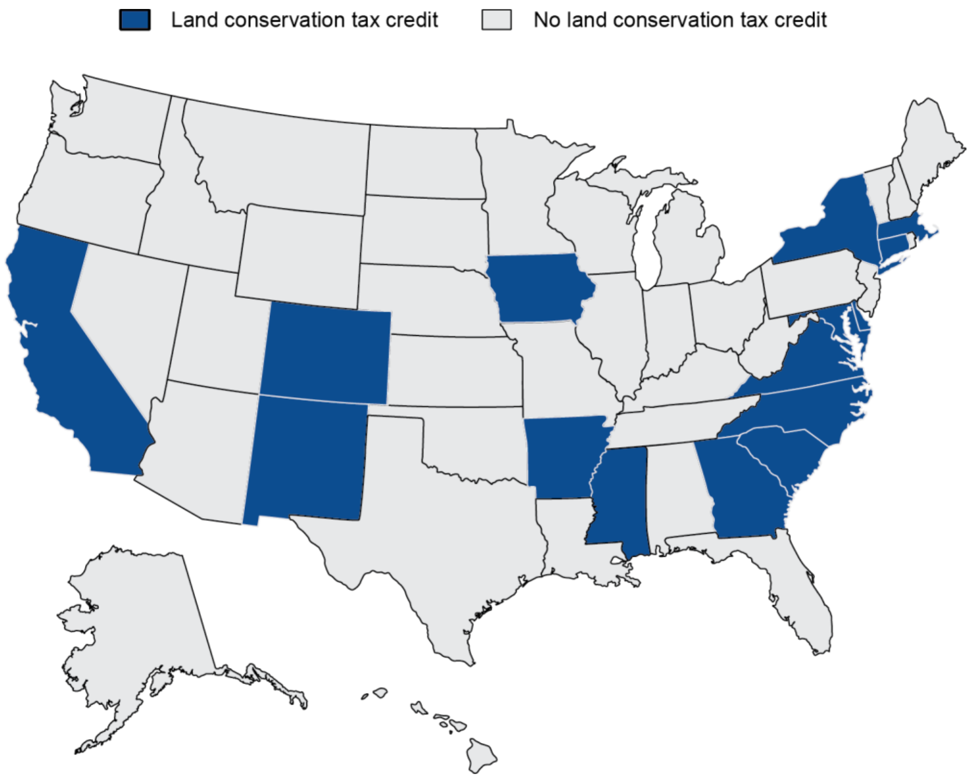
States' reliance on tax credits compared to other land conservation funding methods, such as grant or land acquisition programs, can vary. The design of the tax credits can also differ in key respects, including the expenditure level, the value of the credit as a percentage of fair market value, whether there is a cap on the amount of credits a donor can receive, and whether the credit is refundable or transferable. A state's approach to funding land conservation and whether a land conservation tax credit is offered are policy choices that are often influenced by the preferred type of land conservation in the state.

Most States Do Not Have Land Conservation Tax Credits and Rely More on Grants and State Land Acquisitions to Provide Financial Support for Land Conservation

In addition to Virginia, 14 states currently have land conservation tax credits. However, the majority of states, 35 in total, do not (Figure 9). Instead, these states rely on grant and land acquisition programs funded through bonds, general revenue, and various dedicated revenue sources. For example, Pennsylvania supports land conservation solely through grant and land acquisition programs and does not offer any tax incentives for land conservation. The state's grant and land acquisition programs are funded in part with dedicated revenue sources, including cigarette taxes and real estate transfer taxes. In total, Pennsylvania's grant and land acquisition programs typically receive over $20 million for land conservation each year, compared to $13.4 million in Virginia.

Of the states with land conservation tax credits, JLARC staff identified several states that differ from Virginia in the extent to which they rely on tax credits versus grant and land acquisition programs to provide financial support for land conservation. At least one state takes a more balanced approach to funding land conservation. North Carolina provides financial support for land conservation through grant and state land acquisition programs as well as a land conservation tax credit. Funding for North Carolina's grant and land acquisition programs totaled approximately $170 million in 2008. Unlike Virginia, North Carolina relies partly on dedicated revenue sources such as a real estate transfer tax and personalized license plate fees to support its grant and land

Figure 9: Most States Do Not Offer Land Conservation Tax Credits



Note: Florida offers a property tax exemption for land conservation rather than an income tax credit.

Source: JLARC staff analysis of land conservation funding in other states.

acquisition programs. North Carolina's land conservation tax credit provided roughly $20 million in financial support for land conservation during the same year–substantially less than the more than $100 million awarded in Virginia.

States can also take the opposite funding approach compared to Virginia, and rely primarily on grant and land acquisition programs to fund land conservation. Maryland, for example, supports land conservation largely through grant and state land acquisition programs funded by dedicated revenue sources, including real estate transfer tax and agricultural transfer tax revenue. In recent years, these grant and land acquisition programs have received around $100 million in funding, though funding has also reached several hundred million or been reduced below $100 million in certain years. Funding level fluctuations are attributed to annual changes in the real estate market, which result in increases or decreases in the funding generated through real estate transfer taxes for land conservation. Maryland also uses a land conservation tax credit, but it provides less than $1 million in credits each year.

JLARC staff identified only one other state that funds land conservation similar to Virginia. Georgia relies primarily on a tax credit to support its conservation efforts, with more limited funding for grant and land acquisition programs. Georgia awarded an estimated $29 million in land conservation tax credits in 2010, substantially less than the LPTC. Georgia has historically supported its land conservation grant programs with general fund appropriations, but no appropriations have been made since 2008.

Virginia's LPTC Is Among the Nation's Larger Tax Credit Programs and Among the More Valuable Credits

Compared to other states, Virginia has one of the larger tax credits in terms of overall expenditures. As discussed in Chapter 1, Virginia's LPTC has an overall cap of $100 million, with annual inflation adjustments increasing it to $111 million for TY 2012. The number of credits awarded has reached this cap every year since it was implemented in 2007. Other states have high overall caps, but include certain restrictions. For example, California's land conservation tax credit has a total program cap of $100 million, but credits are awarded only if general revenue is available to reimburse the amount of the tax credit. Colorado's tax credit will be capped at $34 million beginning in 2013, and several other states have substantially lower caps.

Some land conservation tax credits in other states are—unlike Virginia's LPTC—not capped. However, the fiscal impact of the credits in these states appears substantially less than in Virginia. For example, Georgia's land conservation tax credit is not capped, but averaged an estimated $29 million in 2010. Other states without overall caps still limit the amount of tax credits donors can receive. Based on these limits, tax credits in these states are likely to have a smaller fiscal impact than in Virginia.

The value of a land conservation tax credit to a taxpayer can depend on an individual's specific circumstances, the economy, and other factors. For example, a farmer with low tax liability donating a valuable easement would benefit most from a credit like Virginia's LPTC because credits would not be limited by a per project cap, and the donor could utilize all credits by transferring them for approximately 75 cents per credit dollar. Alternatively, an individual with high tax liability donating an easement might benefit more from a credit that recognizes a higher percentage of fair market value. An example would be Iowa's tax credit that recognizes 50 percent of fair market value. This could be more valuable than Virginia's LPTC because the donor would receive a higher percentage return on the donation as long as it did not exceed the per project cap. Furthermore, due to the donor's high tax liability, credits could be used without transferring them.

Despite the different value that tax credits can have for a given individual, a comparison of the provisions of Virginia's LPTC to other states' land conservation tax credits suggests that Virginia's can be among the more valuable. As shown in Table 12, Virginia's LPTC has no individual credit cap per project. While the amount of credits that can be claimed per year is capped at $100,000, unclaimed credits can be transferred. Only six states other than Virginia also offer refundable or transferrable tax credits, but each of these six states has either per project or annual caps on the individual credit amount. Furthermore, though other states provide a credit value of a higher percent of fair market value, most are neither refundable nor transferrable, and others have individual caps. As shown in Table 12, credit programs in California and Connecticut appear more valuable than Virginia's LPTC. However, as discussed above, tax credits in California must be reimbursed with general revenue and Connecticut's credit is only available to corporations.

According to many land conservation experts in Virginia and other states, the design of the LPTC makes it one of the most successful land conservation tax credits in the nation. Land conservation staff in other states described the LPTC as the envy of the nation. Staff

Table 12: Depending on Individual Circumstances, Virginia's LPTC Can Be Among the More Valuable Tax Credits Compared to Other States

	Individual credit cap		Credit design	
State	Per project	Per year	Transferable/ Refundable	Credit value (percent of fair market value)[a]
California	0	0	No	55%
Connecticut[b]	0	0	No	50
Virginia	**0**	**$100,000**	**Transferable**	**40**
New York	0	$5,000	Refundable	25
Georgia	$250,000-$1 million[c]	0	Transferable	25
Colorado	$375,000	0	Both[d]	50
New Mexico	$250,000	0	Transferable	50
Massachusetts	$50,000	0	Refundable	50
South Carolina	$250/acre	$52,500	Transferable	25
North Carolina	$250,000-$500,000[e]	0	No	25
Iowa	$100,000	0	No	50
Maryland	$80,000	$5,000	No	100
Arkansas	$50,000	$5,000	No	50
Delaware	$50,000	0	No	40
Mississippi	$10,000	0	No	50

[a] Credits are typically awarded as a percentage of the fair market value of the donation. New York and Mississippi calculate their credits as a percentage of real estate taxes and the transaction costs of donating an easement, respectively.
[b] Credits only offered to corporations.
[c] Cap set at $250,000 for individuals, $500,000 for corporations, and $1 million for partnerships.
[d] Refundable only in years of a budget surplus.
[e] Cap set at $250,000 for individuals and $500,000 for corporations and other entities.

Source: JLARC staff review of other states' statutes and the land conservation literature.

from several states said their land conservation tax credit would be more effective if it was transferable or had a larger overall program cap, similar to Virginia. Staff from several states without land conservation tax credits said their land conservation programs would benefit from having a credit like the LPTC.

Like Virginia, States With Tax Credits Use Them to Conserve Multiple Types of Land

Most land conservation tax credits are used to promote the conservation of multiple types of land. As discussed previously, Virginia's LPTC is available for land or easement donations that meet at least one of eight conservation purposes. Of the 14 other states with conservation tax credits, 12 appear to have credits that promote a similarly broad range of conservation projects. For example, effective in 2013, Georgia's tax credit must meet two of five conservation purposes defined by its Department of Natural Resources. North Carolina's Conservation Tax Credit is available for the conservation of forestland, farmland, historic landscapes, land with public access to water bodies, and other types of land.

However, at least two states appear to have tax incentives that are more narrowly focused than the LPTC in Virginia. Tax credits in Arkansas and Mississippi appear to be limited to certain types of land. Specifically, Arkansas' Wetland and Riparian Zone Conservation Tax Credit applies to the donation of wetlands and riparian buffers. Mississippi's tax credit, outlined in section 27-7-22.21 of the *Mississippi Code,* applies to the donation of land along scenic streams and natural heritage land. (Mississippi has a second land conservation tax credit with broader criteria outlined in section 27-7-22.22 of the *Mississippi Code*.) Land that does not meet these conservation purposes is not eligible to receive tax benefits. Partly due to such narrow eligibility criteria, tax credits in these states are awarded to a relatively small number of conservation projects.

According to land conservation staff in other states, tax credits are valuable tools for promoting a broad array of land conservation efforts. However, staff emphasized that tax credits are not effective at directing financial support to specific parcels of land. Unlike grant programs, most land conservation tax credits are not designed to prioritize the conservation of certain properties over others. Instead, they offer benefits broadly to all eligible tax credit applicants on a first-come, first-served basis.

Most land conservation tax credits are not designed to prioritize the conservation of certain properties over others.

One exception, however, is Massachusetts, where a tax credit prioritizes the conservation of certain land using detailed criteria. Individuals are eligible to receive Massachusetts' Land Conservation Tax Credit if they donate land the state has identified as valuable according to GIS maps and a set of tiered criteria (Exhibit 1). Land

Exhibit 1: Massachusetts' Land Conservation Tax Credit Program Uses Detailed Selection Criteria to Determine Eligibility for Credits

Tier 1

1. Land with high and medium yield drinking water aquifers.
2. Land identified in state, regional, and local Public Water Supply Protection Plans.
3. Land containing core or priority habitat as determined by the Department of Fish and Game.
4. Land containing prime or state-important agricultural and forest soils.
5. Land containing critical natural landscapes in various state upland and aquatic resource maps, as identified with GIS maps.
6. Land identified in other regional plans for water quality protection of rivers, streams, lakes, and significant wetlands, including reduction of erosion, especially for land contributing directly to the protection of public drinking water supplies.

Source: Massachusetts Executive Office of Energy and Environmental Affairs.

must have the required amount of tier one, two, and three land to qualify. For example, land is eligible if it meets five basic conservation criteria and has more than 50 percent coverage, or more than five acres, of land with tier one environmental assets. However, tax credits are still awarded based on the order in which applications are received, not their conservation value.

STATES USE A VARIETY OF DEDICATED REVENUE SOURCES, AND CERTAIN SOURCES ARE MORE STABLE THAN OTHERS

As noted in Chapter 1, a major focus of the study mandate is to identify potential dedicated revenue sources for land conservation. States use a wide variety of dedicated revenue sources to support land conservation. As shown in Table 13, the two most commonly used dedicated revenue sources are voluntary in nature. For instance, Delaware relies on revenue from voluntary donations on income tax forms, and Tennessee uses revenue from specialty license plates to provide financial support for land conservation. Hunting and fishing license fees, conservation stamps, bonds, and real estate-related revenue sources are commonly used as involuntary dedicated revenue sources. For example, West Virginia collects a $9 deed recording fee for land conservation.

Dedicated revenue sources differ widely in their ability to provide revenue for land conservation and in the stability of revenue provided. Whereas voluntary revenue sources such as income tax waiver donations typically generate small amounts of revenue, mandatory revenue sources like real estate transfer taxes generally produce larger amounts of revenue. Certain dedicated revenue sources are also more stable than others. For example, state

Table 13: Voluntary Dedicated Revenue Sources Are Most Commonly Used by Other States for Land Conservation

Dedicated revenue source	Type	Number of states using source	Example
Voluntary contributions of income tax refunds	Voluntary	28	Delaware allows individuals to donate money from tax refunds to the Nongame Wildlife, Endangered Species and Natural Areas Preservation Fund.
License plate (conservation-related, personalized)	Voluntary	27	Tennessee sells several conservation license plates that cost $56.50 for non-personalized and $91.50 for personalized letters, a portion of which goes to conservation activities.
Bonds (general obligation, revenue)	Involuntary	23	In 2009, New Jersey approved a $400 million general obligation bond to be used for a variety of land conservation activities through the Garden State Preservation Trust.
Hunting and fishing license fee	Involuntary	20	Oklahoma collects an annual fee on hunting and fishing licenses (rates depend on license).
Conservation stamp (broad, duck stamp)	Involuntary	20	Colorado requires hunters and anglers to purchase a $10 Habitat Stamp with hunting and fishing licenses, the proceeds of which are used to acquire public access land.
Real estate tax or fee	Involuntary	17	West Virginia collects a $9 deed recording fee on deeds and other documents for land acquisitions and grants through the Outdoor Heritage Conservation Fund.
Lottery income	Involuntary	7	Minnesota devotes 40 percent of all state lottery proceeds to the Environment and Natural Resources Trust Fund for natural resource projects.
Sales tax revenue (general, outdoor goods)	Involuntary	4	In 1998, New Jersey voters approved an initiative to earmark $98 million of sales tax revenue every year, for 30 years, for land conservation.

Note: Dedicated revenue sources for land conservation change annually. As a result, data regarding the number of states that use a specific funding source may vary from year to year.

Source: JLARC staff analysis of state agency websites and the Trust for Public Land's *Conservation Almanac*.

agency staff in Colorado report that revenues generated through hunting and fishing license fees have remained relatively stable in recent years. Conversely, states that use real estate transfer taxes for land conservation, including Maryland, North Carolina, and Pennsylvania, report that revenues have been unstable due to decreased real estate activity in recent years.

Land conservation staff in other states report that funding land conservation efforts with dedicated sources is preferable to funding it with general revenue because dedicated sources are typically a more predictable source of revenue. Like Virginia, many states continue to use general fund appropriations to support their land conservation programs. However, similar to Virginia, several states have experienced substantial decreases in general fund appropriations for land conservation in recent years, partly as a result of economic downturns. For example, land conservation staff in North Carolina reported that general fund appropriations for land conservation have been reduced from typical levels of over $100 million per year to approximately $13 million in FY 2012. In Georgia, no revenue has been appropriated to the state's land conservation grant program since 2008.

Land conservation staff in several states reported that while dedicated revenue sources typically provide more predictable funding than general fund appropriations, they are not always guaranteed sources of funding for land conservation. Dedicated revenue sources can either be defined in statute or a state's constitution. The majority of states appear to have statutorily defined dedicated revenue sources. For example, Maryland dedicates a percentage of its real estate transfer tax revenue to land conservation. However, a portion of the transfer tax revenue dedicated to land conservation has been reallocated to other funding priorities in recent years. Although several general obligation bonds have been passed in Maryland to replace land conservation funding that has been redirected from dedicated sources, staff report that bonds typically do not replace dedicated funds dollar-for-dollar during the year that they are reallocated.

Finally, at least two states dedicate revenue for land conservation in their constitutions. Colorado dedicates nearly all lottery proceeds to conservation programs that support a variety of conservation purposes at the state and local levels. Only lottery proceeds in excess of $35 million per year are used for other purposes, such as education. Minnesota's constitution specifies that 3/8 of one percent of general sales tax revenue is to be used for land conservation activities each year, including the protection of land with valuable habitats, wildlife, water resources, recreational opportunities, and cultural heritage. State agency staff from both states report that funding has not been diverted to other purposes in recent years.

Chapter 4

Dedicated Revenue Options Could Improve Virginia's Ability to Conserve Priority Land

In Summary

Virginia could maintain its current approach to funding land conservation, which relies primarily on the Land Preservation Tax Credit (LPTC). This approach has the effect of emphasizing acreage goals over conserving priority land, but allows the State to achieve a high conservation rate in a cost-efficient manner. Alternatively, Virginia could allocate a greater share of land conservation revenue to grant and land acquisition programs. This approach would have the effect of giving more emphasis to conserving priority land. JLARC staff reviewed a wide range of dedicated revenue options, and identified seven that could allow Virginia to adopt a more balanced funding approach. Two options would have minimal financial impact: (1) replacing annual appropriations for grant programs with dedicated funds, and (2) redirecting revenue from the LPTC to grant and land acquisition programs. Two options would raise moderate amounts of additional dedicated revenue: (3) increasing the $1 deed recordation fee and (4) increasing the five percent fee on the transfer of LPTC credits. Two options would raise more substantial amounts of dedicated revenue: (5) authorizing additional bonds for State land acquisitions and (6) dedicating new or existing State recordation tax revenue to land conservation. A final option (7) uses multiple dedicated revenue sources in combination to provide additional revenue, while spreading the cost over a broader tax base and minimizing the impact on individual taxpayers.

The mandate for this study directs JLARC staff to develop options that would provide dedicated revenue for land conservation. Each option identified would result in some degree of increase in the amount of dedicated revenue available for land conservation. The impact of the options identified can be compared to the "baseline" of not making any changes to Virginia's current approach of relying primarily on tax credits to support land conservation. Both the current approach and options for additional dedicated revenue have implications for the types of land conservation the State can support.

CONTINUING VIRGINIA'S CURRENT APPROACH EMPHASIZES TOTAL ACREAGE OVER CONSERVING PRIORITY LAND

Whether Virginia continues its current approach to land conservation, or adopts a more balanced funding approach and distributes a greater share of land conservation revenue to grant and land acquisition programs, depends on whether it prioritizes conserving acreage or conserving priority land. Chapter 2 concludes that the relatively lower revenue available for land acquisition and grant programs has the effect of emphasizing acreage over priority land. This results from two factors. First, it is inherently difficult to direct financial resources to specific types of land, or to a specific property, through broad tax credits such as the LPTC. This is because LPTC credits can be used to conserve any of eight types of land and are awarded on a first-come, first-served basis. Second, nearly 90 percent of Virginia's financial support for land conservation over the last decade has been through the LPTC. Consequently, the vast majority of State revenue for land conservation cannot be directed towards conserving specific priority land.

By contrast, adopting a more balanced approach to land conservation would have the effect of giving increased priority to conserving priority land. As discussed in Chapter 2, this is because grant and land acquisition programs have a relatively higher ability to direct resources toward priority land. This priority land could include land that provides public access and economic benefits, such as State parks and wildlife management areas; historically significant land such as Civil War battlefields; and environmentally sensitive areas, including high-priority forestland in the Chesapeake Bay watershed.

Whether Virginia continues its current approach to land conservation or adopts a more balanced approach also has financial and other implications. By continuing to rely primarily on the LPTC, the State would maintain a relatively stable and cost-efficient land conservation approach that conserves land at a historically high rate. Maintaining the current approach also means Virginia would remain different from most other states, which rely less on tax credits or do not use them at all. States that rely more on grant and land acquisition programs, and fund them with dedicated revenue sources, have an ongoing source of revenue that can be used to conserve priority land and provide public access.

RANGE OF DEDICATED REVENUE SOURCES COULD BE USED FOR LAND CONSERVATION

A wide variety of dedicated revenue sources could be considered for land conservation in Virginia. More than 20 different dedicated sources have been used in other states to support land conservation programs. Dedicated revenue sources have also been considered or recommended for Virginia in prior studies, as discussed in Chapter 1. In addition, Virginia currently uses two dedicated revenue sources for land conservation, and several other revenue sources have been used occasionally by the Department of Game and Inland Fisheries (DGIF) to support its land acquisition efforts.

To develop additional dedicated revenue source options that could allow Virginia to adopt a more balanced funding approach, JLARC staff used a three-step process (Figure 10). This process was used to initially identify many potential options, then make a preliminary assessment of the viability of those options, and ultimately assess the impact of seven options. In the first step, potential options were identified based on their being used in other states, previously recommended or currently used in Virginia, or cited in literature and by land conservation experts. The first step also used the results of the assessment of Virginia's current approach in Chapter 2 to identify options that would improve this approach.

In the second step, the potential viability of options was assessed by considering their connection to land conservation activities, administrative impacts, impacts on other public funding priorities, and whether they would improve Virginia's current funding approach. Based on this assessment process, several dedicated revenue options identified in step one did not appear viable for Virginia. For example, states such as Arizona, Colorado, and Nebraska use lottery proceeds to fund land conservation programs. Revenue from the Virginia Lottery could provide substantial stable revenue for land conservation programs. However, the State lottery has no connection to land conservation. Without an expansion of gaming in Virginia, using lottery proceeds for land conservation would also come at the expense of K-12 education. Article X of the *Constitution of Virginia* dedicates all lottery proceeds in the Commonwealth to K-12 education, unless four-fifths of the House and Senate vote to use proceeds for another purpose. For these reasons,

Figure 10: Three-Step Process Was Used to Identify and Assess Dedicated Revenue Source Options in Virginia

I. Identify Many Potential Options	II. Assess Potential Viability in Virginia	III. Estimate Impact of Seven Options
Used in other states	Connection to land conservation	Land conservation goals for total acreage and priority land
Recommended in prior studies	Administrative impacts	Available revenue
Currently used in Virginia and could be expanded	Impact on other public funding priorities	Taxpayers
Cited in literature or by stakeholders	Would improve current funding approach (Chapter 2 assessment)	Allocation, stability, and cost efficiency
Would improve current funding approach (Chapter 2 assessment)		

Source: JLARC staff analysis of land conservation and finance literature, interviews with land conservation stakeholders, State agency staff, and other states.

JLARC staff did not estimate the impacts of using lottery proceeds for land conservation in Virginia. Appendix F provides information about other dedicated revenue options assessed in step 2 and not selected for further assessment in step 3, including options for modifying the LPTC.

In the third and final step of this process, the seven selected options were assessed for their impact on the State's ability to achieve its land conservation goals; the total revenue available for land conservation and the impact on taxpayers; and the impact on the balance, stability, and cost-efficiency of the State's funding approach. These are the same criteria used in Chapter 2 to assess Virginia's current approach to land conservation, with the addition of two financial criteria to estimate the impact on available revenue and taxpayers (Table 14).

Any additional revenue generated from dedicated sources could be used to support a variety of land conservation programs that complement the LPTC.

Any additional revenue generated from dedicated sources could be used to support a variety of land conservation programs that complement the LPTC. For example, revenue could be directed to the State's primary land conservation grant program, the Virginia Land Conservation Foundation (VLCF), and distributed among each of the major land conservation categories through VLCF's evaluation and ranking process. New revenue could also be used to support the preservation of farmland through grants from the Virginia Department of Agriculture and Consumer Services (VDACS), the protection of Civil War battlefields or other historically significant land through grants from the Department of Historic Resources (DHR), and financial assistance for landowners donating

Table 14: Criteria Chosen to Assess the Impact of Dedicated Revenue Source Options

	Criteria	Definition
Financial criteria	Available revenue	Total amount of revenue available for land conservation across all revenue sources
	Taxpayers	Individuals or segments of the economy that would bear the burden of providing additional revenue for land conservation
	Allocation	Percentage of the State's total financial support for land conservation allocated to (i) the LPTC, (ii) grant programs, and (iii) land acquisition programs
	Stability	Change over time in the amount of financial support for each program
	Cost efficiency	Relative extent to which each program conserves land by (i) minimizing total conservation costs and (ii) leveraging non-State funds
Criteria related to goals	Total acreage	Relative ability to direct financial support toward increasing the amount of land conserved
	Priority land	Relative ability to direct financial support toward conserving land identified as desirable for environmental, recreational, or other conservation purposes

Source: JLARC staff analysis of prior studies, literature, and interviews with State agencies and land conservation organizations.

easements through grants from the Virginia Outdoors Foundation (VOF). Revenue could also be used to acquire and develop additional land available for public use by hunters, anglers, and other outdoors enthusiasts. Finally, in the future additional revenue may be needed for land trusts and State agencies to support the stewardship of land already conserved.

TWO DEDICATED REVENUE OPTIONS WOULD HAVE MINIMAL FINANCIAL IMPACT BUT PROVIDE MORE BALANCED FUNDING

Two dedicated revenue options would have minimal financial impact while improving Virginia's ability to direct resources toward priority land. These options would provide additional or more stable revenue for grant and land acquisition programs, but would not increase the State's total financial support for land conservation or levy additional taxes and fees on Virginia residents.

Option 1: Dedicate General Revenue to Grant and Land Acquisition Programs at Current Funding Levels

The first option is designed to improve the stability of funding for grant and land acquisition programs without increasing total State land conservation expenditures. Virginia could dedicate revenue to grant and land acquisition programs, at current funding levels, in place of annual appropriations for grants and bonds for land acquisitions. This could be done by dedicating revenue in amounts equal to the historical average funding level for grant and land acquisition programs. Over the last decade, an average of $4.2 million annual funding has been provided for the State's four land conservation grant programs, which provide grants for a broad range of land conservation projects. Annual funding for land acquisition efforts has averaged $9.2 million over the last decade.

Dedicating general revenue to grant and land acquisition programs at their current funding levels would have positive impacts on land conservation in Virginia, and minimal fiscal impact. More predictable revenue for these programs would allow State agencies to more strategically direct funds toward priority land. As a result, it would have a positive impact on the State's ability to meet goals for conserving priority land or providing public access. However, this positive impact would be relatively low because the amount of dedicated funds would remain low compared to expenditures through the LPTC. The option is unlikely to have a material impact on the State's conservation rate or ability to meet statewide acreage goals.

Replacing general fund appropriations and bonds with dedicated revenue would also have positive impacts on the stability and cost-efficiency of Virginia's land conservation funding. It would provide more stable funding for grant programs, which have received high-

The option would also make Virginia's land conservation funding more cost efficient by avoiding the interest costs of debt.

ly unstable funding over the last decade. If dedicated revenue replaced bonds for State land acquisitions, the option would also make Virginia's land conservation funding more cost efficient by avoiding the interest costs of debt. The total interest on a $40 million bond would range from $16 to $26 million depending on the type of bond and the associated bond rating. While some bond revenue may be needed to develop State parks to ensure funds are available as development proceeds, the acquisition of public land could be financed with dedicated revenue. Finally, if general revenue was dedicated to grant and land acquisition programs at current funding levels, it would not increase the average annual amount of State financial support for land conservation. However, it would require an increase in the general fund appropriation for all land conservation programs, which totals $3.8 million for FY 2013—slightly lower than the annual average of $4.2 million over the last decade.

Several sources of general revenue could be used. For example, the State's share of the recordation or grantor's tax could be used if a revenue source with a connection to the development of open space was desired. The State sales and use tax could also be used if policymakers wanted the cost of land conservation programs to be borne by a larger number taxpayers. The amount dedicated could be indexed to inflation or general fund growth to ensure that funding retains its purchasing power over time. Alternatively, a portion of the revenue from a $20 deed recordation fee (§3-6.01, 2012 Appropriation Act) that currently goes to the general fund could be dedicated to land conservation programs. Revenue from the fee is currently split evenly between water quality improvement efforts and the general fund.

Option 2: Redirect Financial Support From the LPTC to Grant or Land Acquisition Programs

The second option with minimal financial impact is designed to improve Virginia's ability to direct financial resources toward its land conservation goals without increasing the amount of State financial support for land conservation. Virginia could redirect financial support from the LPTC to grant and land acquisition programs. Potential options could include reducing the LPTC cap by about $10 million to its original $100 million, or by a larger amount, such as $20 million. The precise amount of financial support redirected would depend on the extent to which the General Assembly wishes to support land conservation through tax incentives or grant and land acquisition programs.

Redirecting LPTC Funds Would Substantially Increase Funding for Grants and Land Acquisition, but Slow the Rate of Conservation Donations. Redirecting financial support from the LPTC to other land conservation programs would have both positive and negative impacts. It would improve the State's ability to direct revenue toward programs that conserve priority land. For example, removing the annual inflationary adjustment and setting a permanent cap of $100 million would eventually provide about $10 million of additional funding for grant and land acquisition programs, nearly doubling funding for these programs compared to their annual average of $13 million. Redirecting $20 million would nearly triple funding levels. However, redirecting more substantial amounts of financial support from the LPTC may slow Virginia's conservation rate, hindering the State's ability to make progress toward acreage goals such as the Governor's 400,000 initiative. The LPTC accounts for much of Virginia's increased conservation rate since 2000 and for progress toward acreage goals.

A more substantial redirecting of financial support from the LPTC might disproportionately affect the ability of small landowners to receive credits for donations.

A related concern is that a more substantial redirecting of financial support from the LPTC might disproportionately affect the ability of small landowners to receive credits for donations. A larger reduction to the LPTC cap, for example to $75 or $50 million, might result in a larger share of credits issued to landowners making large donations that receive $1 million or more in credits. As a result, fewer credits would be available for small landowners. Donations receiving $1 million or more in credits have accounted for an average of $44.2 million annually since the program was capped in 2007. According to TAX staff, without a cap on the amount of credits available per donor, substantially reducing the LPTC's cap could limit the availability of credits to small landowners. The impact of a lower cap on small landowners could be limited to the extent that they applied early in the year or were prioritized over larger donors.

This option would not necessarily increase total revenue for land conservation or impact taxpayers. However, redirecting a consistent amount would make funding for grant and land acquisition programs more stable and predictable. The option could also increase the cost efficiency of the State's land conservation funding, depending on the degree to which redirected funds replace the use of debt for land acquisitions. If this occurs, the State would avoid the interest costs associated with purchasing land.

However, the State's land conservation funding could become *less* cost efficient if a substantial amount of financial support is redirected from the LPTC. The LPTC is a cost-efficient conservation method because it generally acquires easements and requires landowners to donate 60 percent of the fair market value of an easement or land. By contrast, grant and land acquisition programs often support conservation projects that pay the full cost of an easement or the full title, and leverage non-State funding to varying degrees. Although some grant programs have effectively leveraged non-State funds, there is no guarantee that sufficient non-State funds would be available to leverage if funding for grant and land acquisition programs was substantially increased.

Financial Support From the LPTC Would Be Phased In. Redirecting financial support from the LPTC could be done by reducing the statutory cap on the annual amount of LPTC credits issued and dedicating the same amount of funding to grant and land acquisition programs. This could be essentially budget-neutral if general revenue is then dedicated to those programs. Financial support from the LPTC is foregone income tax revenue when taxpayers claim credits on their tax returns. A lower LPTC cap would result in less foregone revenue from the general fund, providing additional general revenue. Dedicating this revenue to land conservation programs should have minimal impact on the general fund if the dedicated amounts equal these general fund savings each year.

However, to minimize the impact on the general fund, Virginia would have to phase in a shift in financial support from the LPTC to other conservation programs. Taxpayers have up to ten years to claim LPTC credits, so credits issued in a given tax year will impact the general fund gradually as credits are claimed. According to an analysis of LPTC claims by TAX staff, on average, half of the credits issued in a given tax year are claimed by taxpayers on that year's tax return. Within three years, approximately 75 percent of issued credits are claimed. About 15 percent are claimed over the remaining years, with up to ten percent of credits expiring without being claimed. As a result, a reduction in the LPTC cap will impact the general fund gradually as less revenue is foregone, providing additional general revenue that could be dedicated to other conservation programs in increasing amounts.

On average, half of the credits issued in a given tax year are claimed by taxpayers on that year's tax return.

Table 15 illustrates how a $20 million reduction in the LPTC cap would allow financial support to be gradually redirected to other conservation programs with minimal impact on the general fund. Assuming credits are claimed in the historical pattern described above, reducing the LPTC cap by $20 million for TY 2013—from the current $111 million to $91 million—could result in about $10 million in fewer credits claimed during FY 2014. If the LPTC cap remained at $91 million, these general fund savings could gradually increase to $15 million by FY 2016 and a maximum of $18 million by FY 2024. The remaining $2 million in credits, or ten percent, could expire and yield no savings. The impact of a lower LPTC cap on the general fund may be difficult to detect if credits claimed do not follow historical patterns. TAX staff note that changes in the economy, personal income, and other factors impact when taxpayers claim credits.

Table 15: About Half of a Reduction in the LPTC Cap Could Be Redirected to Other Conservation Programs in the First Year, and Three-Fourths by the Third Year

FY	Cumulative percent of credits issued in TY 2013 and claimed	Cumulative amount of credits issued in TY 2013 and claimed ($ Millions)				Cumulative, additional revenue available ($ Millions)
		$111 Cap[a]		$91 Cap		
2014	50%	$56	–	$46	=	$10
2015	66	73	–	60	=	13
2016	75	83	–	68	=	15
…	…	…		…	=	…
2024	90	100	–	82	=	18

[a] Current LPTC cap (tax year 2012).

Source: JLARC staff analysis of data from the Virginia Department of Taxation.

TWO DEDICATED REVENUE OPTIONS COULD RESULT IN MODERATE ADDITIONAL REVENUE FOR LAND CONSERVATION

Two options for dedicated revenue sources would provide a moderate amount of additional revenue for land conservation. Both options involve expanding a dedicated revenue source currently used in Virginia to fund the stewardship of conserved land. If implemented, the options would increase total State financial support for land conservation by providing additional revenue for grant and land acquisition programs. This revenue could also be used to provide additional funding for stewardship if this is needed.

Option 3: Increase the Fee on the Transfer of LPTC Credits

The third option is designed to provide a moderate amount of additional dedicated revenue for grant and land acquisition programs. Virginia could raise that revenue by increasing the fee on the transfer of LPTC credits and dedicate the resulting revenue to these programs. A five percent fee is currently assessed on the value of transferred credits (or two percent of the fair market value of the donation). Up to half of the revenue from the fee is dedicated to DCR and TAX for the cost of administering the LPTC. All remaining revenue is dedicated to stewardship and distributed annually by VLCF to the land trusts and government entities responsible for enforcing the conservation purposes of donated land or easements. To provide additional funding for the stewardship of land conserved through the LPTC, in 2010 the General Assembly removed a $10,000 limit on the maximum transfer fee that could be assessed (Chapter 248*, 2010 Acts of Assembly).*

The rationale for the current transfer fee appears to be that recipients of the tax credit should assist in the cost of administering the LPTC and enforcing the conservation purpose of donated interests. It is also reasonable, therefore, to assume that credit recipients should also help support other land conservation programs. As discussed in Chapter 2, it is difficult to direct financial support to specific land through tax incentives such as the LPTC, and conservation experts believe more directed efforts such as grant and land acquisition programs would enable Virginia to expand—and, where feasible, connect—pockets of land already conserved. Increasing the LPTC transfer fee would also allow Virginia to expand an existing dedicated source and avoid the administrative costs of implementing a new tax or fee.

Increasing the LPTC transfer fee would have both positive and negative impacts. The additional dedicated revenue for grant and land acquisition programs would positively impact the State's ability to achieve acreage goals as well as more specific goals focused on priority land or public access. It would also have mixed but low financial impacts. It could result in a moderate amount of additional revenue for land conservation. Based on the historic transfer rate (or the percentage of issued credits transferred since the LPTC was made transferable) of 88 percent, each percentage point increase in the transfer fee could result in approximately $980,000 in additional revenue. This would represent an increase of eight percent over average annual funding for grant and land acquisition programs of $13.4 million. The option would also make the State's land conservation funding approach slightly more cost-efficient if any revenue was used in place of bond revenue for land acquisitions.

Each percentage point increase in the transfer fee could result in approximately $980,000 in additional revenue.

Increasing LPTC transfer fees is unlikely to materially impact the stability of Virginia's land conservation funding. However, revenue could be substantially lower and difficult to predict if transfer rates do not follow their historic rate. Between 2003 and 2009, annual transfer rates were near or above 90 percent, with minimal annual variation. However, transfer rates have since declined, to 78 percent in 2010 and 64 percent in 2011. TAX staff attribute the decline to a recent court ruling *(Tempel v. Commissioner, 136 T.C. No. 15 (2011))* that tax credits are considered capital assets and can be taxed at the lower capital gains rate rather than a credit recipient's marginal tax rate, if held for at least a year. TAX staff expect transfer rates will return to their historic rate of 88 percent over time. If transfer rates remain at their 2010 or 2011 levels, however, each one percent increase in the transfer fee could result in $711,000 to $866,000 in additional revenue.

The main negative impact of increased LPTC transfer fees would be on taxpayers making conservation donations. A fee increase would reduce the net value of transferred LPTC credits. The current net value of a transferred credit is about 75 percent, which reflects an average resale value of 85 percent, a typical brokerage fee of five percent, and the five percent transfer fee assessed by the

State. Each one percent increase in the transfer fee would reduce the net value of a transferred credit by the same percentage and increase the average cost to credit recipients of transferring credits. The average credit issued since the LPTC became available has been $473,400, and the current transfer fee on a credit of this value is $23,700. Each percentage point increase in the fee would raise the transfer fee on the average credit by $4,700, or by 20 percent.

Each percentage point increase in the fee would raise the transfer fee on the average credit by $4,700, or by 20 percent.

Because of this increase in the cost of transferring credits, there is also a risk that the higher transfer fees could reduce the LPTC's effectiveness in promoting conservation donations. Land conservation stakeholders in Virginia expressed concern that further increases in the transfer fee could make the LPTC less attractive for landowners, particularly "land-rich, cash-poor" landowners for whom a larger transfer fee is regressive. The transfer fee typically must be paid in full before a credit recipient can receive the proceeds from a credit transfer.

However, two factors suggest a moderate increase in the transfer fee would have minimal impact on the LPTC's effectiveness in promoting conservation donations. First, removing the $10,000 limit on total transfer fees has not reduced the willingness of landowners to make conservation donations. That change took effect July 1, 2010, and the maximum amount of credits were still issued in both TYs 2010 and 2011. Second, as described in Chapter 3, Virginia's LPTC can provide among the more valuable tax credits for land conservation in the nation, and a moderate increase in the transfer fee appears unlikely to change this.

Option 4: Increase the $1 Open Space Preservation Deed Recordation Fee and Expand It Statewide

Like the previous option, the fourth option is intended to provide a moderate amount of additional dedicated revenue for grant and land acquisition programs. Virginia could increase and expand the existing $1 Open Space Preservation fee across the State. The fee is currently assessed on the recordation of 40 types of deeds in the 115 localities where VOF currently holds conservation easements. The *Code of Virginia* (§58.1-817) dedicates all revenue from the fee to VOF, which uses the funds to support its stewardship efforts. The General Assembly could expand the fee statewide, increase it, or both. The additional revenue could be dedicated to the State's grant and land acquisition programs, or land stewardship efforts if additional funding is needed.

Deed recordation fees are used to fund land conservation programs in several states, including Massachusetts, West Virginia, and New Hampshire. A document recording fee of $10 was also recommended in 2003 by the Natural Resources Funding Commission as one of two dedicated revenue sources for the VLCF grant program. According to land conservation staff in Virginia and other states, real estate-related revenue sources have a connection to land conservation because development reduces the amount of open space in the Commonwealth.

Like the previous option, increasing the Open Space Preservation fee and expanding it statewide would mainly have moderately positive impacts on Virginia's land conservation efforts. Additional dedicated revenue for grant and land acquisition programs would improve the State's ability to achieve its land conservation goals, including statewide acreage initiatives and goals for conserving priority land. Because the option is intended to provide only moderate amounts of additional dedicated revenue, however, these impacts are likely to be moderate.

Increasing and expanding the fee would have both positive and negative financial impacts. The option would result in moderate amounts of additional revenue for grant and land acquisition programs. In FY 2011, the fee was collected in approximately 115 localities and resulted in about $550,000. As Table 16 illustrates, collecting the $1 fee in all 134 localities results in a modest increase in revenue, to approximately $610,000, but expanding it statewide *and* increasing it to $2 or more would result in substantially more revenue. If the fee were expanded to all localities, each $1 increase would result in an additional $679,700. Collecting a $2 fee statewide would result in about $1.2 million, and collecting a statewide fee of $10—as recommended by the Natural Resources Funding Commission in 2003—would result in a total of $6.1 million. The additional $679,700 from a $2 fee would increase funding for grant and land acquisition programs by five percent over average annual levels, while the additional revenue from a $10 fee would increase funding more than 40 percent. To the extent that this additional revenue replaced bond revenue for State land acquisitions, it would make land conservation funding more cost-efficient by avoiding the interest costs of debt.

Table 16: Increasing and Expanding the Open Space Preservation Fee Results in Substantially More Revenue Than Collecting $1 Statewide

	Revenue options		Revenue projections	
	Fee amount	**Collection method**	**Estimated revenue ($ Millions)**	**Increase over FY 2011 revenue (percent)**
Current	$1	~115 localities	$0.55	n.a.
Options	$1	Statewide	0.61	12%
	2	Statewide	1.20	124
	10	Statewide	6.10	1,020

Source: JLARC staff analysis of data from the Supreme Court of Virginia and the Virginia Outdoors Foundation.

Revenue from increased deed recordation fees is likely to fluctuate with economic conditions, and actual revenue from the Open Space Preservation fee may be higher or lower than JLARC staff estimates. As a result, this dedicated revenue option is unlikely to have a material impact on the stability of Virginia's land conservation funding approach. Revenue from the fee has decreased by more than 40 percent since peaking at $991,000 in FY 2006. Assuming the recordation of deeds returns to FY 2006 levels, increasing the fee by $1 and collecting it statewide could result in as much as $2.2 million, and a $10 fee collected statewide would result in $11.2 million.

Expanding the Open Space Preservation fee to all localities and increasing it to $2 would result in a modest increase in most recordation fees.

Taxpayers would be negatively impacted if the fee was increased and expanded, though this impact would be low if the fee increase was moderate. The option would increase the cost of recording deeds in Virginia. Currently, recordation fees total $43 on deeds of conveyance and $37 on deeds of trust (Table 17). Expanding the Open Space Preservation fee to all localities and increasing it to $2 would result in a modest increase in most recordation fees. Larger fee increases would increase total recordation fees more substantially. For example, raising the fee to $10 would increase total recordation costs to $52 on deeds of conveyance and to $46 on deeds of trust.

Recordation fees in Virginia appear to be higher than fees in the majority of other states, and expanding the Open Space Preservation fee could further increase Virginia's fees compared to other states. According to data provided by Ernst Publishing, which tracks recordation fees in all 50 states, Virginia's recordation fees are higher than between 37 and 42 other states. Virginia's ranking

Deeds of Conveyance

Deeds of conveyance transfer the legal title of property from one party to another. Recording a deed of conveyance protects the property owner from another party acquiring interest in the property.

Deeds of Trust

Deeds of trust transfer the legal title of property to a lender, such as a mortgage company. The deed of trust secures the interest of the lender, which holds the title as security for the loan.

Table 17: Recordation Fees in Virginia Total $43 on Deeds of Conveyance and $37 on Deeds of Trust

	Current fee amount	
Recordation fee	**Conveyance**	**Trust**
Clerk's fee (§17.1-275)[a]	$16	$16
Technology Trust Fund fee (§17.1-279)	5	n.a.
Transfer/partition fee (§58.1-3314)[b]	1	n.a.
Processing fee (§3-6.01, 2012 Appropriation Act)	20	20
Open Space Preservation Fee (§58.1-817)[c]	1	1
Total	**$43**	**$37**

[a] Fee is $16 for documents one to ten pages in length, $30 for 11-30 pages, and $50 for more than 31 pages. Most recorded documents in Virginia are less than ten pages.
[b] Deeds of transfer are $1; deeds of partition are $1.75.
[c] Currently assessed only in localities where the Virginia Outdoors Foundation holds conservation easements.

Source: JLARC staff analysis of *Code of Virginia* and information from Supreme Court of Virginia.

varies because states' recordation fees depend on the length of the document, the locality in which the document is recorded, and other factors. Depending on these factors, expanding the Open Space Preservation fee statewide and increasing it to $10 could make Virginia's recordation fees higher than an additional one to three states.

TWO DEDICATED REVENUE OPTIONS COULD RESULT IN SUBSTANTIAL ADDITIONAL REVENUE FOR LAND CONSERVATION

Two options for dedicated revenue sources would provide a substantial amount of additional revenue for land conservation in Virginia. The first option would extend the State's use of tax-supported bond debt to support the acquisition and development of land available for public use. The second option would substantially increase total financial support for land conservation through the use of recordation taxes.

Option 5: Authorize Additional Bonds for Land Acquisition and Development

General Obligation (GO) Bond

GO bonds must be approved by the General Assembly as well as a majority of voters. They generally carry the highest credit rating–and lowest interest rate–because they are backed by the full faith and credit of the Commonwealth and repaid with general funds.

Virginia Public Building Authority (VPBA) Bond

VPBA bonds require only legislative approval. They carry a slightly lower rating because they lack the full backing of the Commonwealth, but the use of general funds to service the debt helps ensure a higher rating than revenue-backed bonds.

The fifth option is designed to provide more substantial amounts of additional revenue for the conservation of land with public access. Virginia could authorize additional bonds for the acquisition and development of public land such as State parks, wildlife management areas, and natural area preserves. In its 2011 report, Virginia's Debt Capacity Advisory Committee estimated that the State could authorize an additional $467 million in tax-supported debt for FYs 2012 and 2013. Over the last decade, approximately five percent of new tax-supported debt issued was for land conservation, including the development of State parks. Because no new debt for land conservation has been authorized for FYs 2012, 2013, or 2014, if the General Assembly wished to keep land conservation's share of tax-supported debt at approximately five percent, the State could authorize an additional $40 million in bonds for land conservation projects. These bonds could be authorized after agencies spend the remaining $6 million from the 2002 and 2008 bonds.

As discussed in Chapter 1, since 1992 Virginia has regularly used tax-supported debt to acquire and develop land for public access. General obligation (GO) and Virginia Public Building Authority (VPBA) bonds are supported by general revenue, allowing their costs to be spread across current and future taxpayers. Bonds are also one of the most common dedicated sources of revenue for land conservation in other states, and have been recommended for Virginia in prior studies and by land conservation stakeholders.

Further use of State bonds to support land conservation would have both positive and negative impacts on Virginia's approach to funding land conservation. Additional bond funds would positively impact the State's ability to achieve the full range of land conservation goals, including statewide acreage goals and conserving priority land. Authorizing an additional $40 million in bonds would substantially improve the State's ability to provide public access to conserved land. According to DCR staff, additional bond funds could be used to begin developing the six State parks for which the agency has already acquired land. Other agencies could also use bond funds to acquire new land for public use. For example, DGIF could acquire additional hunting land in Northern Virginia and the Tidewater region, where such access is limited. To the extent that bond proceeds are used to develop existing State parks rather than acquire new land, this option is likely to only moderately improve Virginia's ability to meet statewide acreage goals.

The financial impact of additional bonds for land conservation would be mixed. A $40 million bond would provide a substantial amount of additional revenue for land conservation. The impact on individual taxpayers would be minimal, as the cost of servicing the debt would be spread across current and future taxpayers over a 20-year term. Additional bond revenue would have no material impact on the stability of Virginia's land conservation funding.

However, additional bond authorizations would negatively impact the cost efficiency of the State's land conservation funding. Although the interest rate on new bonds could be as low as 3.5 percent, interest costs on a $40 million bond authorization would total between $16 and $26 million over 20 years depending on the bond rating (Table 18). According to estimates developed by Treasury staff, a $40 million GO or VPBA bond would require similar annual debt service and total interest payments, and would count toward the State's debt capacity. However, a $40 million bond backed by a dedicated revenue source would require a higher interest rate and total interest payments, but would not be subject to the State's debt limit.

Several factors may limit Virginia's long-term ability to support land conservation with debt.

Authorizing additional bonds for land conservation would also reduce the State's debt capacity. Several factors may limit Virginia's long-term ability to support land conservation with debt. Virginia's reliance on debt has grown substantially in recent years, with outstanding tax-supported debt increasing 54 percent between FY 2005 and FY 2009, from $5.9 billion to $9.0 billion. Much of this growth reflects the increasing use of bonds for transportation. As a result, in FY 2012 the State's debt service totaled $594 million and was the sixth largest general fund program in the budget.

Table 18: A $40 Million Bond Would Require Total Interest Costs of About $16-26 Million Over 20 Years

Bond (Rating)	Interest rate	Annual debt service ($ Millions)	Total interest ($ Millions)	Contributes to debt capacity?
General obligation (AAA)	3.50%	$2.8	$15.9	Yes
Virginia Public Building Authority (AA)	3.75	2.9	17.6	Yes
Revenue-backed (BBB)	5.25	3.3	25.7	No

Note: Debt service and interest figures assume (i) all authorized debt is issued at the same time and (ii) level debt service over a 20-year repayment term. Interest rate, annual debt service, and total interest will vary depending on the revenue source to repay a revenue-backed bond. Total interest figures are in nominal, not real, terms.

Source: JLARC staff analysis of data from the Virginia Department of Treasury.

The Commonwealth's ability to issue new debt is constrained by the State's debt capacity… and its ability to budget for future debt service payments.

The Commonwealth's ability to issue new debt is constrained by the State's debt capacity limit of five percent and its ability to budget for future debt service payments. As of August 2012, Virginia's AAA bond rating carries a "negative outlook" from one of the three primary U.S. credit rating agencies because of the State's linkage to the federal government. These factors also would likely limit the feasibility of using bond debt to fund land conservation grant programs, which appears to be legal but represents a departure from the State's historical use of bond debt.

Option 6: Dedicate Revenue from the State Recordation Tax to Land Conservation

The sixth option is also designed to provide a substantial amount of additional dedicated revenue for grant and land acquisition programs. Virginia could dedicate State recordation tax revenue to land conservation, either by allocating some amount of existing revenue or by creating a recordation surcharge. Recordation taxes are assessed by the State and localities when a variety of deeds are recorded with a circuit court clerk. Taxes on the recordation of real estate and other legal documents are among the most common dedicated revenue sources used in other states to support land conservation. Recordation taxes also have a connection to land conservation in that revenue is partially driven by the pace of land development, which reduces the amount of open space that remains.

Three recordation taxes are currently assessed on deeds and other documents recorded in Virginia (Table 19). The State and local recordation taxes are assessed on a broad range of deeds as well as leases and contracts. The grantor's tax applies to a narrower set of deeds involving the conveyance of property. Under the *Code of Virginia*, localities can impose a local recordation tax equal to one-third of the State recordation tax. The State and local recordation

Table 19: Three Recordation Taxes Are Currently Assessed in Virginia

Recordation tax	Deeds taxed: Conveyance	Trust	Lease	Contract	Tax rate
State recordation (§58.1-800)	✓	✓	✓	✓	25 cents per $100
Local recordation (§58.1-3800)	✓	✓	✓	✓	8.3 cents per $100
Grantor's (§58.1-802)	✓	×	×	×	50 cents per $500

Note: Recordation taxes on deeds of conveyance are assessed on the greater of the consideration or the value of the property. Taxes on deeds of trust are assessed on the value of the obligation secured by the deed. The grantor's tax is assessed on the consideration or value purchased, excluding the value of any liens.

Source: JLARC staff analysis of the *Code of Virginia* and information provided by the Virginia Department of Taxation.

taxes are usually paid by the buyer or borrower when he or she records a deed, while the *Code* assesses the grantor's tax on the seller. However, the cost of any recordation tax can be shifted to either party by agreement. Most revenue from the State's recordation tax goes to the general fund, with three exceptions related to transportation:

- Two of every 25 cents collected is dedicated to the Commonwealth Mass Transit Fund and one cent to the Highway Maintenance and Operating Fund (§58.1-815.4).
- $40 million is periodically dedicated to developing the U.S. Route 58 corridor (§58.1-815).
- $40 million is periodically allocated to localities for transportation or education purposes (§58.1-816).

Revenue from local recordation taxes remains with the localities. Revenue from the grantor's tax is split evenly between the State and localities after clerks of court receive five percent for administrative costs.

State Recordation Tax or the Grantor's Tax Could Provide Dedicated Revenue for Land Conservation. Recordation tax revenue could be dedicated to land conservation in two primary ways. First, the General Assembly could divert some amount of existing revenue from the State recordation tax or the grantor's tax. This could be done by allocating a fixed dollar amount of annual funding for land conservation programs, with an annual inflationary adjustment to ensure that funds retain their purchasing power. Alternatively, a certain percentage of either tax could be dedicated. For example, one cent from each 25 cents in recordation taxes collected—or four percent of total revenue—could be dedicated to grant and land acquisition programs.

Second, a surcharge could be applied to the State recordation tax or the grantor's tax, with the new revenue dedicated to grant and land acquisition programs. According to TAX staff, a surcharge could be applied to the State recordation tax without increasing the local recordation tax rate. Under a grantor's tax surcharge, revenue from the base rate of 50 cents per $500 would continue to be split among the State, localities, and circuit court clerks according to the current allocation. All revenue from the surcharge could be dedicated to State land conservation programs.

Recordation Tax Could Provide Substantial Revenue for Land Conservation, but Would Negatively Impact Other Funding Priorities and/or Taxpayers. Using State recordation taxes for land conservation could have highly positive and negative impacts on Virginia's land conservation efforts and taxpayers. Revenue from recordation taxes would substantially improve the State's ability to achieve both statewide acreage goals and goals for conserving priority land. Revenue from recordation taxes could provide substantial amounts of additional revenue for grant and land acquisition programs. Based on revenue projections developed by TAX staff, diverting one cent of State recordation tax revenue from the general fund would result in an additional $13 million annually for grant and land acquisition programs. Imposing a one-cent surcharge on the current recordation tax rate would likely result in an identical amount. This $13 million in additional revenue would nearly double funding for grant and land acquisition programs over their annual average. The $13 million would be about four percent of the $320 million in total State recordation tax revenue projected for FY 2013.

Diverting one cent of State recordation tax revenue from the general fund would result in an additional $13 million annually.

The grantor's tax has a similar capacity to provide additional revenue for land conservation, though a larger percentage diversion or surcharge would be required to provide as much revenue as a recordation surcharge. Because the grantor's tax applies only to deeds conveying property, and not trust or other deeds, it generates substantially less revenue than the recordation tax. As a result, diverting one cent of the State's share of grantor's tax revenue, or imposing a one-cent surcharge, would result in approximately $1.1 million. Generating over $10 million would require diverting ten cents, or a ten-cent surcharge.

While recordation taxes could provide substantial additional revenue for land conservation, they would negatively impact either a large number of taxpayers or the State's general fund. If a surcharge was added to the State recordation or grantor's tax, recordation costs for most property transfers would increase (Table 20). Currently, recordation taxes and fees total $1,480 for the sale of a $200,000 home with a $160,000 mortgage. This equates to a net recordation tax burden of 0.740 percent of the sale price. A one-cent surcharge on the grantor's tax would increase total recordation costs by $4, to $1,484, raising the net tax burden to 0.742

Table 20: A One-Cent Recordation Tax Surcharge Would Increase Total Recordation Costs by $4 or $36 for a $200,000 Home and $160,000 Mortgage

		1¢ grantor's surcharge		1¢ recordation surcharge	
	Current	**Cost increase**	**New cost**	**Cost increase**	**New cost**
Total recordation costs	$1,480	$4	$1,484	$36	$1,516
Net burden (% of sale price)	**0.740%**	**0.742%**		**0.758%**	

Source: JLARC staff analysis of the *Code of Virginia* and information provided by the Virginia Department of Taxation.

A one-cent surcharge to the State recordation tax would increase total taxes and fees by $36, to $1,516, raising the net tax burden to 0.758 percent.

percent. A one-cent surcharge to the State recordation tax would increase total taxes and fees by $36, to $1,516, raising the net tax burden to 0.758 percent.

Alternatively, if a portion of existing recordation tax revenue was dedicated to land conservation, the State's general fund would be negatively impacted. The precise impact would depend on whether revenue was dedicated as a *percentage* of total recordation tax revenue or as a fixed *amount*. According to TAX staff, recordation tax revenue can vary widely from year to year depending on the economy, interest rates, and other factors. Between FY 2000 and FY 2009, State recordation tax revenue varied an average of 26 percent each year. As a result, diverting a *percentage* of existing revenue would provide varying amounts of revenue for land conservation. For example, diverting one cent of recordation taxes (four percent of total State recordation tax revenue) during the FY 2000-2009 period would have resulted in as little as $6 million in FY 2000 and as much as $28 million in FY 2006. By contrast, dedicating a fixed *amount* of existing revenue would ensure consistent revenue for land conservation but have a varied impact on the general fund. For example, dedicating $20 million during this period would have represented nearly 15 percent of total State recordation tax revenue in FY 2000 and less than five percent in FY 2006. As a result, dedicated revenue from the State recordation or grantor's tax could have a positive or neutral impact on the stability of Virginia's land conservation funding depending on how it was implemented.

OPTIONS WOULD IMPROVE ABILITY TO CONSERVE PRIORITY LAND AND RESULT IN A MORE BALANCED APPROACH, BUT HAVE OTHER POSITIVE AND NEGATIVE IMPACTS

All six options discussed thus far in this chapter would positively impact the State's ability to achieve goals related to conserving priority land. All six options would also result in a more balanced approach because they either redirect current revenue towards, or raise additional revenue for, grant programs and land acquisition.

Options 3 through 6 increase the total amount of available revenue for land conservation… at the expense of various taxpayers.

While options 1 and 2 redistribute roughly the same amount of total available revenue, options 3 through 6 increase the total amount of available revenue for land conservation. These increases, however, would come at the expense of various taxpayers. Those bearing the burden of raising this additional revenue would include those who use the LPTC, those paying recordation taxes and fees on various transactions, or all taxpayers in the form of repaying bond debt.

To reduce the burden to certain taxpayers, a seventh option would be to increase multiple revenue sources by smaller amounts. This option could still raise a moderate amount of revenue, but would do so by lowering the potential financial burden on taxpayers compared to other options.

To illustrate how this could be achieved, Table 21 highlights six potential revenue sources. These six are a combination of those discussed in the previous options and some that were not developed into stand-alone options because they would not raise sufficient revenue. For example:

- A 1/10-cent surcharge to the State recordation tax (rather than the one-cent surcharge described in option 6) would result in $1.3 million in available revenue. Total recordation costs for a $200,000 home and $160,000 mortgage would increase by $3.60, to $1,483.60.
- Increasing the fee on transferred LPTC credits by one-quarter of a percentage point (rather than the full percentage point discussed in option 3) would result in approximately $300,000 in revenue. The transfer fee on an average LPTC credit of $450,000 would increase by about $1,140.

However, several concerns and operational details would need to be addressed if such a combined approach were implemented. Because the new taxes and fees would impact a variety of taxpayers and users, an appropriate distribution of revenue would be needed to ensure that the benefits of new conservation projects are equitably shared. For example, requiring hunters and anglers to purchase an annual conservation stamp should be carefully considered because DGIF raised various licensing and access fees in 2011. DGIF staff also stated that revenue from such fees is primarily used to support agency operations, and that the number of hunters and anglers has been declining in Virginia. Similarly, a surcharge on State park fees may be difficult to implement depending on how certain fees are collected. However, there may be other dedicated revenue sources that could be considered as part of this approach.

Table 21: Illustration of Combining Multiple Dedicated Revenue Options and Spreading the Cost Burden Across a Wider Range of Taxpayers

Illustrative option	Estimated annual revenue ($ Millions)	Estimated impact on taxpayers
Add a 0.10 cent surcharge to the State recordation tax	$1.3	Increases total recordation costs ($200,000 home / $160,000 mortgage) by $3.60
Increase the LPTC transfer fee from 5% to 5.25%	0.3	Increases the transfer fee on the average LPTC credit by about $1,140
Increase the $1 deed recordation fee to $1.50 and expand statewide	0.4	Increases deed recordation costs by 50 cents for most taxpayers and $1.50 for some
Divert interest on VLCF funds from the general fund	0.2	No material, direct impact on taxpayers[b]
Require hunters and anglers to buy an annual conservation stamp	1.2[a]	Increases the cost of annual hunting and fishing licenses by $2 and lifetime licenses by $10
5% surcharge on State park fees	0.8	Increases the weekend daily parking fee at State parks from $3 to $3.15[c]
Total estimated annual revenue	**$4.2**	

[a] Estimate does not include revenue from the sale of conservation stamps to hunters and anglers purchasing *lifetime* licenses.
[b] Option would impact the State's general fund.
[c] Other State park fees (e.g., cabin and lodge rental fees) are higher, and therefore would be increased more substantially.

Source: JLARC staff analysis of data from State agencies.

In conclusion, each of the options presented would represent a change from Virginia's current approach that relies on the LPTC to primarily achieve total acreage goals (Table 22). Consideration of these options, therefore, requires a decision by policymakers to move towards a more balanced approach to land conservation funding. This more balanced approach would have a variety of positive and negative impacts, but in all cases improve Virginia's ability to use grant programs and land acquisition to emphasize the conservation of priority land.

Table 22: Options Could Direct Revenue to Priority Land and Result in a More Balanced Funding Approach but Also Would Have Other Positive and Negative Impacts

● No impact ↑ Positive impact ↓ Negative impact

		Impact: Goals		Impact: Financial				
Option	**Primary purpose**	**Total acreage**	**Priority land**	**Available revenue**	**Taxpayers**	**Allocation**	**Stability**	**Cost efficiency**
Minimal additional revenue								
1. Dedicate revenue to grant and land acquisition programs	Increase stability of grant and land acquisition funding	●	↑	●	●	●	↑	↑
2. Redirect financial support from the LPTC	Improve State's ability to direct funds toward priority land	↓	↑	●	●	↑	↑	↑ / ↓
Moderate additional revenue								
3. Increase LPTC transfer fee	Improve State's ability to direct funds toward goals and priorities	↑	↑	↑	↓	↑	●	↑
4. Increase and expand $1 Open Space Preservation Fee	Moderately increase total land conservation revenue	↑	↑	↑	↓	↑	●	↑
Substantial additional revenue								
5. Authorize additional bonds	Improve State's ability to direct funds toward goals and priorities	↑	↑	↑	↓	↑	●	↓
6. Dedicate State recordation tax revenue	Substantially increase total land conservation revenue	↑	↑	↑	↓	↑	↑ / ↓	↑
Combination								
7. Increase multiple revenue sources by smaller amounts	Spread smaller financial burden among wider range of taxpayers	↑	↑	↑	↓	↑	↑ / ↓	↑ / ↓

Source: JLARC staff analysis.

Appendix A Study Mandate

SENATE JOINT RESOLUTION NO. 335

Directing the Joint Legislative Audit and Review Commission to study long-term dedicated funding sources for land conservation. Report.

Agreed to by the Senate, February 2, 2011
Agreed to by the House of Delegates, February 22, 2011

WHEREAS, conservation of the Commonwealth's landscapes not only preserves our historic and cultural heritage but also protects our working lands and water quality; and

WHEREAS, conserving the Commonwealth's working lands and open spaces will help to ensure the long-term viability of our most significant economic drivers: agriculture, forestry, and tourism; and

WHEREAS, forests and fields provide ecosystem services with multiple benefits for local waterways and the Chesapeake Bay by filtering stormwater, recharging aquifers, sequestering carbon, consuming excess nutrients, and preventing siltation, while also protecting natural landmarks and wildlife; and

WHEREAS, recognizing the many fundamental values attributable to the preservation of our landscapes and natural beauty, upon taking office Governor McDonnell made a commitment to conserve 400,000 acres of open space in the Commonwealth by January 2014; and

WHEREAS, the Commonwealth has developed well-designed programs and tools to incentivize land conservation by private landowners, but lacks a stable funding source to support such programs and to allow for comprehensive targeting of conservation dollars to attain the highest benefit; and

WHEREAS, a stable revenue source dedicated to land conservation in the Commonwealth will provide long-term planning and purchasing power to engage landowners across the state to preserve the Commonwealth's historically and ecologically significant landscapes and working lands; and

WHEREAS, a reliable funding stream will leverage local efforts by providing matching funds for local government land conservation efforts and complements the Virginia Land Preservation Tax Credit program for land conservation in the Commonwealth; and

WHEREAS, Article XI, Section 1 of the Constitution of Virginia states: ". . . it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth"; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission be directed to study long-term dedicated funding sources for land conservation.

In conducting its study, the Joint Legislative Audit and Review Commission shall examine and build upon prior legislative and administrative study efforts to establish a stable funding source dedicated to land conservation and report on the status of previous recommendations. The Commission shall also look to other states for innovative funding mechanisms and identify and develop viable options for potential long-term dedicated funding sources for land conservation in the Commonwealth.

Technical assistance shall be provided to the Joint Legislative Audit and Review Commission by the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, the Department of Forestry, the Virginia Economic Development Partnership, and the Virginia Resources Authority. All agencies of the Commonwealth shall provide assistance to the Joint Legislative Audit and Review Commission for this study, upon request.

The Joint Legislative Audit and Review Commission shall complete its meetings for the first year by November 30, 2011, and for the second year by November 30, 2012, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary shall state whether the Joint Legislative Audit and Review Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Appendix

B Research Activities and Methods

JLARC staff conducted the following primary research activities for this review:

- structured interviews with State agency staff, land trust staff, and other land conservation stakeholders in Virginia;
- quantitative analysis of Virginia's current approach to funding land conservation and of estimated impacts of potential dedicated funding options for land conservation;
- review of other states' approach to funding land conservation;
- case studies of selected land conservation projects; and
- review of State documents and research literature.

Appendix F describes the research activities used to select and assess options for dedicated revenue sources in Virginia.

STRUCTURED INTERVIEWS

To obtain information about Virginia's approach to funding land conservation, JLARC staff conducted interviews with State agency staff, staff from statewide and regional land trusts, and other land conservation stakeholders in Virginia. JLARC staff also interviewed several State agency staff and land conservation stakeholders in other states to compare Virginia's approach to funding land conservation with other states' approaches. In total, JLARC staff conducted more than 50 structured interviews.

State Agency Staff

JLARC staff conducted 20 structured interviews with staff from the eight State agencies that administer land conservation programs in Virginia:

- Department of Agriculture and Consumer Services
- Department of Conservation and Recreation
- Department of Environmental Quality
- Department of Forestry
- Department of Game and Inland Fisheries

- Department of Historic Resources
- Department of Taxation
- Virginia Outdoors Foundation

These interviews addressed the State's current approach to supporting land conservation, including the characteristics of the programs and funding methods currently used. JLARC staff also used these interviews to determine the State's progress towards past and present land conservation goals, and allow agencies to provide input on dedicated revenue options for Virginia. JLARC staff also interviewed staff from the Virginia Department of the Treasury regarding the process for issuing State bonds and expending bond revenue.

Land Trusts and Land Conservation Stakeholders in Virginia

JLARC staff conducted structured interviews with staff from nine land trusts, including two statewide and seven regional land trusts in Virginia. JLARC staff selected these land trusts for their geographic diversity and level of experience with land conservation. These interviews were used to understand the role private land trusts play in Virginia's land conservation efforts, determine their conservation goals and efforts to achieve these goals, and solicit their input on the characteristics of Virginia's current approach to supporting land conservation. JLARC staff also sought input from land trust staff on dedicated revenue options for Virginia. The nine land trusts interviewed were:

- The Nature Conservancy
- Trust for Public Land
- Civil War Trust
- Piedmont Environmental Council
- New River Land Trust
- Northern Virginia Conservation Trust
- Middle Peninsula Land Trust
- Valley Conservation Council
- Western Virginia Land Trust

JLARC staff also invited input from various land conservation stakeholders during a conference organized by Virginia's United Land Trusts, an organization representing approximately 30 land trusts in the State. Over ten land conservation stakeholders provided feedback in group or individual discussions at the conference. Discussion topics included the characteristics of Virginia's current approach to supporting land conservation and the viability of specific dedicated revenue options for the State.

In addition to State agencies and land trusts, JLARC staff also conducted structured interviews with other public and private land conservation stakeholders in Virginia and nationwide. Interviews included staff at the

- Chesapeake Bay Commission;
- U.S. Department of Agriculture;
- Albemarle County's Acquisition of Conservation Easement Program;
- Virginia Association of Counties;
- Virginia Municipal League;
- Virginia Conservation Credit Pool, LLC;
- Chesapeake Conservancy; and
- Financial Analytics, Ltd.

These interviews were used to understand the strengths and weaknesses of Virginia's current approach to supporting land conservation as well as the role that certain local and federal programs have in Virginia's land conservation efforts.

State Agency Staff and Land Conservation Stakeholders in Other States

JLARC staff conducted a total of 17 interviews with state agency staff and land conservation stakeholders in other states. For the nine states that were reviewed in-depth (listed on pages 77-78), JLARC staff identified several state agency staff involved in key land conservation programs. JLARC staff conducted structured phone interviews with state agency staff to gather background information on each state's main land conservation programs and revenue sources, including the advantages and drawbacks associated with using certain revenue sources. During many of the interviews, state agency staff also provided estimates of the amount of revenue generated by particular land conservation revenue sources each year.

In addition to state agency staff, JLARC staff also interviewed individuals from The Nature Conservancy (TNC) in other states. TNC staff provided additional information on how certain states fund land conservation, and provided JLARC staff with annual reports and background literature on land conservation funding in these states.

QUANTITATIVE ANALYSIS

JLARC staff collected a variety of data from numerous State agencies during the course of the study. This data allowed JLARC staff to analyze Virginia's current approach to supporting land conservation and estimate the impact of dedicated revenue source options for land conservation. In some instances, data limitations and resource constraints precluded some analysis.

Analysis of Virginia's Current Approach to Funding Land Conservation

In order to determine the State's allocation of financial support to each of its land conservation programs, JLARC staff collected expenditure data for FY and TY 2002-2011 from each of the eight agencies that administer State land conservation programs. Detailed information could not be obtained for three programs due to data limitations and resource constraints, but State agency staff reported that total financial support for land conservation through these programs has been relatively small. These programs were the Conservation Reserve Enhancement Program, the Water Quality Improvement Fund, and the Clean Water Revolving Loan Fund Land Conservation Loan Program. Additionally, staff at the Department of Treasury were not able to determine the amount of interest the State has paid to date on debt authorized by past bonds for land conservation because interest payments also cover debt these bonds authorized for other funding purposes. However, Treasury staff were able to estimate the amount of total interest the State will pay on debt authorized for land conservation.

JLARC staff also obtained and analyzed land conservation project data from six State agencies that administer Virginia's main grant and land acquisition programs. Data for Virginia Land Conservation Foundation grants, however, was unavailable due to data limitations and resource constraints. JLARC staff used this data to determine each program's ability to leverage non-State funds.

Data on funds leveraged by individual grant and land acquisition programs have several limitations that should be considered when using them to guide policy decisions. First, this data only represents funding sources that State agency staff are aware of. Landowners may not report all funding sources used to purchase their land because funding may be in excess of a required program match or may be obtained after the State funding has been acquired. This data limitation may be of particular concern for programs that have not traditionally tracked the total amount of leveraged funds.

Second, JLARC staff excluded any landowner donations that grant and land acquisition programs leveraged. Data on whether individual landowners received tax credits for their donations is not public information, so the amount of State financial support provided for these donations could not be determined. Consequently, the assessment may overstate the State's cost for land conserved through programs that have leveraged a substantial amount of donations. State agency staff administering some grant programs reported that landowner donations are rare. Other programs, however, may rely on them more extensively.

Finally, this data only represents grant and land acquisition programs' ability to leverage non-State funds based on historical funding levels for State and other land conservation programs. The State's grant and land acquisition programs may not be able to continue leveraging non-State funding at the same rate if expanded. While information suggests that additional funding may be available from some local and federal programs, the extent to which additional funds from these and other sources could be further leveraged is unknown.

REVIEW OF OTHER STATES' APPROACHES TO FUNDING LAND CONSERVATION

As directed by the study mandate, JLARC staff reviewed the funding approaches and dedicated revenue sources other states use for land conservation. JLARC staff conducted a limited review of the programs and revenue sources used for land conservation nationwide using the Trust for Public Land's (TPL) *Conservation Almanac*. States found to offer land conservation tax credits were reviewed to gather information on the design and estimated fiscal impact of their tax credits. JLARC staff reviewed the overall approach to funding land conservation in a total of nine states. The primary research activities for these reviews were (i) phone interviews with state agency staff, and (ii) data analysis on the programs and revenue sources used for land conservation in these states.

JLARC Staff Conducted In-Depth Reviews of Nine Other States

To compare Virginia's approach to funding land conservation with selected other states, JLARC staff reviewed land conservation funding methods and programs used in the following nine states:

- Colorado
- Georgia
- Maryland
- Massachusetts
- Minnesota

- North Carolina
- Pennsylvania
- Rhode Island
- West Virginia

States were selected for in-depth review if they (1) had geographic similarities with Virginia; (2) were suggested for review by stakeholders; or (3) offered a land conservation tax credit. In addition, several states were selected based on the specific dedicated revenue sources used. For example, JLARC staff conducted an in-depth review of Rhode Island to gather information about using a water utility surcharge to provide revenue for land conservation. For each state, JLARC staff conducted phone interviews with state agency staff and land conservation stakeholders, and requested data on the average annual funding level of dedicated revenue sources, general fund appropriations, and tax incentives.

Comparing Other States' Land Conservation Funding Approaches to Virginia

JLARC staff obtained data from the Trust for Public Land (TPL) to assess the amount of financial support that is provided and the rate at which land is conserved in Virginia compared to other states. JLARC staff used data from 1998-2005 to draw comparisons between all states regarding the average level of state financial support for land conservation per capita, and the annual number of acres conserved per 10,000 persons. Data from 1998-2008 was used to compare the average level of state financial assistance for land conservation per capita in 26 states with land conservation funding levels in Virginia.

To determine how Virginia's approach to funding land conservation compares to other states, JLARC staff analyzed the extent to which selected states use grant programs, land acquisition programs, and tax incentives. JLARC staff compared Virginia-specific data with estimated annual funding from dedicated revenue, general revenue, and tax incentives in the nine states reviewed.

Further, JLARC staff compared other states' land conservation tax credits to Virginia's Land Preservation Tax Credit (LPTC) in several respects. Tax credit programs were evaluated based on their credit value (percent of fair market value), overall and individual credit caps, transferability/refundability, and estimated annual fiscal impact. Information on land preservation tax credit programs was obtained from other state agency staff and reviews of state statutes and agency reports.

CASE STUDIES OF SELECTED LAND CONSERVATION PROJECTS

To supplement its analysis of Virginia's financial support for land conservation, JLARC staff invited land conservation stakeholders to provide examples of instances when the State missed an opportunity to conserve priority land due to limited or unstable funding for grant and land acquisition programs. Two State agencies and four land trusts identified more than 50 such cases. For some of these cases, JLARC staff obtained written descriptions that included each property's size, features, potential conservation benefits, and land use status.

REVIEW OF DOCUMENTS AND RESEARCH LITERATURE

JLARC staff reviewed State agency strategic plans, annual reports, and information on Virginia Performs for each of the key State agencies involved in land conservation. The purpose of this review was to identify the State's land conservation goals and assess the progress towards meeting them.

JLARC staff also reviewed prior legislative and executive-branch studies related to land conservation funding in Virginia. JLARC staff identified ten reports in Virginia's Legislative Information System and in interviews with land conservation stakeholders. The purpose of this review was to identify past recommendations for dedicated funding in Virginia, as directed by the study resolution.

Additionally, JLARC staff reviewed the *Code of Virginia* and past legislation in Virginia's Legislative Information System. This review allowed staff to

- determine the status of past recommendations for dedicated funding;
- identify funding methods the State currently uses or that have been proposed in the past for land conservation; and
- identify current uses of revenue from dedicated funding options for Virginia.

JLARC staff also conducted a review of the land conservation finance literature. JLARC staff reviewed reports by TPL and its *Conservation Almanac* to identify how land conservation efforts are financed both in Virginia and in other states. Information provided by the Land Trust Alliance was used to gather information on how tax credits can be used to support land conservation. Finally, JLARC staff reviewed literature on refundable/transferable tax credits to identify which types of land conservation tax incentives can be most beneficial to taxpayers.

Appendix

C Legislative and Executive Studies Addressing Dedicated Revenue for Land Conservation

Legend: ◯ Not implemented ◑ Partially implemented ● Fully implemented n.a. Not applicable, or recommendation status unclear

Author	Title	Year	Recommendation	Recommendation Status
Chesapeake Bay Commission	*Conserving Chesapeake Landscapes: Protecting Our Investments, Securing Future Progress*	2010	Consider another State land conservation bond	◯
			Increase LPTC annual cap and credit value	◯
			Establish dedicated funding source or stable ongoing general fund appropriations[a]	◯
Joint Subcommittee Studying Long-Term Funding Sources for the Purchase of Development Rights to Preserve Open-Space Land and Farmlands	*Long-Term Funding Sources for the Purchase of Development Rights to Preserve Open-Space Land and Farmlands*	2008	None	n.a.
Department of Conservation and Recreation	*Virginia Outdoors Plan*	2007	Establish stable funding source for VLCF and local purchase of development rights programs	n.a[b]
Board of Forestry	*A Continuing Study on the Provision of Incentives to Preserve Private Forest Lands in the Commonwealth*	2006	Identify dedicated funding source for VLCF	n.a.
Board of Forestry	*SJR75 Study on the Provision of Incentives to Preserve Forest Land in the Commonwealth of Virginia*	2004	None	n.a.
Natural Resources Funding Commission	*Recommendations to Address the Critical Funding Needs of Virginia's Natural Resource Programs*	2003	Implement $2 monthly water utility fee for VLCF and WQIF	◯
			Implement $10 document recording fee for VLCF and WQIF	◑[c]

Author	Title	Year	Recommendation	Recommendation Status
Moss Commission	*The Future of Virginia's Environment*	2002	Support dedicated funding sources for land conservation proposed in 2001	n.a.
Chesapeake Bay Commission	*Keeping Our Commitment: Preserving Land in the Chesapeake Watershed*	2001	Consider passing a dedicated funding source in 2001 such as recordation taxes or land conservation bond[d]	◑[e]
Moss Commission	*The Future of Virginia's Environment*	2000	Create income tax credit for conservation easements	●
			Create tax deduction for gain on sale of land or easements for open-space use	●
Joint Subcommittee Studying the Outdoor Recreation Needs of the Commonwealth	*The Outdoor Recreation Needs of the Commonwealth*	1988	Dedicate grantor and recordation tax revenue for capital costs of State and local parks	○

Note: LPTC = Land Preservation Tax Credit; VLCF = Virginia Land Conservation Foundation; WQIF = Water Quality Improvement Fund. Table excludes recommendations for local dedicated funding mechanisms.

[a] Recommendation is similar to another report recommendation that Chesapeake Bay region states, including Virginia, establish both a core, dedicated revenue source and a range of tax credits.
[b] VLCF began receiving revenue from a fee on the transfer of Land Preservation Tax Credits in FY 2011, but this revenue is only a portion of total VLCF funding, the revenue is used for stewardship costs, and the stability of this revenue source is not yet clear.
[c] Virginia implemented a $1 Open Space Preservation fee in 2004 for stewardship by the Virginia Outdoors Foundation.
[d] Report referred to dedicated funding as a suggested "enhancement opportunity" rather than a recommendation.
[e] In 2002, rather than 2001, Virginia passed two bond initiatives that authorized funds for land conservation.

Source: JLARC staff analysis of legislative and executive branch studies.

Appendix

D Total Land Conserved in Virginia Localities

Locality	Acres Conserved	Percent of Total Land Conserved
Accomack	61,764	21.21%
Albemarle	101,983	22.04
Alleghany	147,441	51.77
Amelia	16,885	7.39
Amherst	64,934	21.36
Appomattox	14,108	6.60
Arlington	1,113	6.69
Augusta	239,505	38.58
Bath	224,853	66.04
Bedford	40,154	8.31
Bland	78,900	34.34
Botetourt	100,399	28.89
Brunswick	7,861	2.17
Buchanan	0	0.00
Buckingham	20,302	5.46
Campbell	8,225	2.55
Caroline	70,851	20.77
Carroll	18,492	6.07
Charles City	8,632	7.37
Charlotte	5,685	1.87
Chesterfield	12,405	4.55
Clarke	24,185	21.35
Craig	122,147	57.66
Culpeper	14,752	6.05
Cumberland	18,633	9.77
Dickenson	8,775	4.13
Dinwiddie	17,160	5.32
Essex	13,622	8.25
Fairfax	49,372	19.53
Fauquier	107,245	25.78
Floyd	13,241	5.43
Fluvanna	13,445	7.32
Franklin	15,944	3.60
Frederick	12,324	4.64
Giles	69,481	30.41
Gloucester	2,972	2.14
Goochland	5,107	2.81
Grayson	48,992	17.28
Greene	27,732	27.60
Greensville	1,416	0.75
Halifax	17,664	3.37
Hanover	4,722	1.56
Henrico	6,397	4.20
Henry	6,894	2.82

Locality	Acres Conserved	Percent of Total Land Conserved
Highland	102,662	38.56
Isle of Wight	4,631	2.29
James City	8,722	9.53
King and Queen	30,943	15.30
King George	12,568	10.91
King William	14,062	7.99
Lancaster	2,741	3.22
Lee	21,591	7.72
Loudoun	45,860	13.78
Louisa	15,968	5.02
Lunenburg	2,461	0.89
Madison	53,928	26.25
Mathews	594	1.08
Mecklenburg	7,668	1.92
Middlesex	2,388	2.87
Montgomery	36,751	14.80
Nelson	38,334	12.69
New Kent	5,604	4.17
Northampton	29,848	22.53
Northumberland	3,723	3.03
Nottoway	26,168	12.98
Orange	29,965	13.69
Page	67,455	33.89
Patrick	20,526	6.64
Pittsylvania	8,824	1.42
Powhatan	7,734	4.63
Prince Edward	14,346	6.35
Prince George	12,053	7.08
Prince William	49,602	22.93
Pulaski	22,352	10.88
Rappahannock	60,304	35.29
Richmond	10,635	8.70
Roanoke	25,815	16.07
Rockbridge	133,171	34.68
Rockingham	184,306	33.84
Russell	20,307	6.68
Scott	36,568	10.64
Shenandoah	82,084	25.05
Smyth	96,851	33.48
Southampton	2,266	0.59
Spotsylvania	18,093	7.05
Stafford	37,895	21.93
Surry	7,250	4.06
Sussex	12,790	4.07
Tazewell	32,515	9.77
Warren	30,104	21.98
Washington	42,446	11.78
Westmoreland	8,896	6.07
Wise	39,948	15.45
Wythe	74,376	25.10
York	21,180	31.22
City of Alexandria	472	4.92
City of Bedford	59	1.32

Locality	Acres Conserved	Percent of Total Land Conserved
City of Bristol	12	0.14
City of Buena Vista	131	2.92
City of Charlottesville	187	2.92
City of Chesapeake	72,587	33.26
City of Colonial Heights	<1	0.01
City of Covington	0	0.00
City of Danville	72	0.26
City of Emporia	0	0.00
City of Fairfax	108	2.80
City of Falls Church	50	3.92
City of Franklin	9	0.18
City of Fredericksburg	545	7.74
City of Galax	55	1.07
City of Hampton	1,488	4.47
City of Harrisonburg	177	1.54
City of Hopewell	43	0.67
City of Lexington	6	0.48
City of Lynchburg	668	2.13
City of Manassas	99	1.54
City of Manassas Park	0	0.00
City of Martinsville	0	0.00
City of Newport News	6,754	15.52
City of Norfolk	2,561	7.41
City of Norton	317	6.19
City of Petersburg	1,423	9.67
City of Poquoson	2,723	26.59
City of Portsmouth	177	0.84
City of Radford	232	3.63
City of Richmond	1,716	4.47
City of Roanoke	2,557	9.29
City of Salem	4	0.04
City of Staunton	256	2.00
City of Suffolk	33,946	13.26
City of Virginia Beach	25,443	16.03
City of Waynesboro	25	0.26
City of Williamsburg	253	4.39
City of Winchester	281	4.87

Source: JLARC staff analysis of data provided by DCR. Data current through June 2012.

Appendix

E Top 40 Localities in Land Preservation Tax Credits Issued and Acres Conserved, 2000-June 2012

Locality	Total Credits Issued	Number of Donations	Acres Conserved
Loudoun	$196,527,482	212	27,419
Albemarle	141,146,441	237	52,566
Fauquier	134,912,843	255	51,236
Culpeper	40,806,901	34	8,701
Orange	34,414,869	76	18,416
Rockbridge	33,798,251	164	36,253
Rappahannock	29,300,749	108	17,753
Spotsylvania	29,227,260	24	3,741
Bath	24,827,945	61	21,199
James City	21,795,000	12	1,052
Stafford	21,230,830	16	4,112
Northampton	20,316,700	39	8,920
Accomack	19,853,877	49	10,726
Clarke	19,245,822	79	8,510
Goochland	19,114,752	29	3,706
Fairfax County	18,254,379	25	231
Greene	16,611,201	51	9,074
King William	14,794,510	18	5,962
Madison	14,299,106	49	10,998
Augusta	13,176,912	76	13,861
Charles City	12,591,541	10	2,888
Amelia	12,084,377	17	14,252
Chesterfield	11,842,789	20	1,520
Hanover	11,409,866	17	2,993
Warren	10,488,650	32	4,862
Nelson	10,344,665	30	8,115
Middlesex	10,245,888	12	2,263
Montgomery	9,638,837	51	9,306
Grayson	9,324,070	45	7,536
Westmoreland	9,205,211	22	6,010
Louisa	8,564,635	26	8,814
Fluvanna	8,197,194	21	7,592
Franklin	7,733,268	26	5,712
Essex	7,042,345	28	8,149
Pittsylvania	6,966,540	13	6,830
Highland	6,647,305	28	13,138
Northumberland	6,560,790	23	2,796
Frederick	6,425,368	23	3,448
Botetourt	6,019,743	33	7,218
Wythe	5,917,706	28	5,488

Note: Counties and cities with less than ten donations have been excluded to ensure the confidentiality of donors.

Source: JLARC staff analysis of data from TAX.

Appendix F

Selection and Assessment of Dedicated Revenue Source Options

JLARC staff used a three-step process to (i) identify dedicated revenue source options for Virginia, (ii) assess their potential viability, and (iii) estimate the impact of the seven selected options (Figure F-1). This appendix also contains information about sources identified by JLARC staff but not selected as options for Virginia.

Figure F-1: Three-Step Process Was Used to Identify and Assess Dedicated Revenue Source Options in Virginia

I. Identify Many Potential Options	II. Assess Potential Viability in Virginia	III. Estimate Impact of Seven Options
Used in other states	Connection to land conservation	Land conservation goals for total acreage and priority land
Recommended in prior studies	Administrative impacts	Available revenue
Currently used in Virginia and could be expanded	Impact on other public funding priorities	Taxpayers
Cited in literature or by stakeholders	Would improve current funding approach (Chapter 2 assessment)	Allocation, stability, and cost efficiency
Would improve current funding approach (Chapter 2 assessment)		

Source: JLARC staff analysis of land conservation and finance literature, interviews with land conservation stakeholders, State agency staff, and other states.

STEP 1: IDENTIFYING POTENTIAL DEDICATED REVENUE SOURCE OPTIONS FOR VIRGINIA

JLARC staff identified nearly 20 different dedicated revenue source options for consideration in Virginia. Staff used four primary factors to build a list of potential options:

- ***Options Used in Other States.*** As directed by the study resolution, JLARC staff looked to other states for dedicated revenue source options. Staff used data from the Trust for Public Land's *Conservation Almanac* to identify specific sources used in other states.

- ***Options Recommended in Past Studies.*** SJR 335 directed JLARC staff to examine prior legislative and administrative study efforts to establish dedicated revenue sources for land conservation. As noted in Appendix B, JLARC staff identified ten studies that recommended or discussed potential dedicated revenue sources.
- ***Options Used in Virginia for Land Conservation.*** In order to consider options for expanding an existing dedicated revenue source or re-using a prior one, staff identified dedicated revenue sources currently or previously used in Virginia.
- ***Options Cited in Literature or by Stakeholders.*** To draw upon land conservation experts, staff reviewed the land conservation finance literature and interviewed land conservation stakeholders in Virginia and other states. Appendix B provides additional detail on the literature reviewed and stakeholders interviewed.

Table F-1 lists the dedicated revenue source options identified by JLARC staff using these four primary factors.

Finally, this identification process also considered the results of JLARC staff's assessment of Virginia's current approach to funding land conservation (Chapter 2). Based on this assessment, staff sought to identify options that would improve the current funding approach by providing additional, stable dedicated revenue for grant and land acquisition programs.

STEP 2: ASSESSING THE POTENTIAL VIABILITY OF DEDICATED REVENUE SOURCE OPTIONS FOR VIRGINIA

JLARC staff used four factors to assess the potential viability of dedicated revenue source options for Virginia:

- ***Connection to Land Conservation.*** JLARC staff considered this factor based on a review of the land conservation finance literature and interviews with land conservation stakeholders and staff in Virginia and other states.
- ***Administrative Impacts.*** Staff assessed the administrative impact of a dedicated revenue source to ensure that selected options were administratively feasible.
- ***Impacts on Other Public Funding Priorities in Virginia.*** Staff considered the impact a dedicated revenue source option could have on other public priorities by competing with them for available revenue.
- ***Impact on the State's Land Conservation Funding Approach.*** Staff also considered the impact an option would

have on Virginia's current approach to funding land conservation, and its potential to provide additional stable revenue for grant and land acquisition programs.

Several Dedicated Revenue Source Options Were Not Selected for Further Review

Several dedicated revenue source options listed in Table F-1 were not selected by JLARC staff for further review in step 3. Options were not selected for a variety of reasons. Some options appeared

Table F-1: JLARC Staff Used Four Primary Factors to Identify Dedicated Revenue Source Options for Virginia

Dedicated revenue source	Number of states using source[a]	Recommended in past studies	Used in Virginia for land conservation[b]	Cited in literature or by stakeholders
Voluntary contributions of income tax refunds	28		✓	
License plate (conservation-related, personalized)	27		✓	
Bonds (general obligation, revenue, etc.)	23	✓	✓	✓
Hunting and fishing license fee	20		✓	
Conservation stamp (broad, duck stamp)	20		✓	✓
Real estate tax/fee	17	✓	✓	✓
Natural resource tax or fee (mineral extraction, gas tax, gas lease)	8			
Lottery proceeds	7			✓
Sales tax revenue (general, outdoor goods)	4		✓	✓
Interest from general fund	2			
Cigarette tax	2			✓
Agriculture transfer tax	1	✓		✓
Utility fee (water, electric)	1	✓		✓
LPTC transfer fee	1		✓	
Solid waste tipping fee	1			✓
Vehicle registration fee	0		✓[c]	
Hotel/Motel tax	0			✓
Income tax	0			✓

[a] Dedicated revenue sources used in other states can change frequently. As a result, data on the number of states using a specific source may not reflect current totals.
[b] Includes revenue sources used only in part for land conservation or at the discretion of the recipient agency. The LPTC transfer fee and $1 Open Space Preservation fee are currently used in Virginia to fund stewardship. DGIF uses conservation license plate revenue, hunting/fishing license fees, conservation stamp revenue, and sales tax revenue from sporting goods primarily for operational expenses. DCR uses voluntary income tax waiver donations for State park development and maintenance.
[c] A vehicle registration fee was established in Virginia to support the 400th anniversary of the Jamestown settlement, land conservation, and other public funding priorities. The fee was not continued after FY 2007.

Source: JLARC staff analysis of state agency websites and the Trust for Public Land's *Conservation Almanac*.

to have little potential for providing additional revenue for land conservation. Income tax waiver donations and conservation license plates are widely used in other states, and are already used to support land conservation in Virginia. However, income tax donations are voluntary, and conservation license plates are just one of many types of specialized plates motorists can purchase. As a result, both options had only limited potential to provide additional revenue for land conservation. For example, the Open Space income tax waiver for DCR provided an average of just $66,000 from 2007 through 2009.

Other dedicated revenue sources could result in substantial revenue for land conservation, but would have a substantial negative financial impact on taxpayers or the State's budget, or be administratively challenging to implement. For example, a $2 monthly water utility fee on each customer account was recommended by the 2003 Natural Resources Funding Commission. According to JLARC staff estimates, this could result in more than $70 million annually. However, staff at the Virginia Department of Health emphasized that such a fee would impose a financial burden on lower-income Virginians, could make it more difficult for water utilities to fund infrastructure maintenance and upgrades in the future, and would be difficult to collect from small water systems.

Other dedicated revenue source options were not selected by JLARC staff because they had little connection to land conservation and would have competed with other public funding priorities in Virginia. For example, a cigarette tax has been used by at least two states to support land conservation, and this option appeared in the land conservation finance literature. However, a cigarette tax has no connection to land conservation and is currently used in Virginia to provide dedicated revenue for State health care services.

JLARC staff also considered but did not select the option of using vehicle registration fees for land conservation. Until FY 2007, the Virginia Land Conservation Foundation grant program received a portion of the revenue from a $1 vehicle registration fee created to support preparation for the 400th anniversary of the Jamestown settlement. However, vehicle registration fees have little connection to land conservation, and registration fees are already used to support operations at the Virginia Department of Motor Vehicles and emergency medical services in the Commonwealth. As discussed in Chapter 4, the option of using proceeds from the Virginia Lottery was not selected by JLARC staff for similar reasons.

JLARC Staff Reviewed Options for Modifying the Land Preservation Tax Credit

JLARC staff also evaluated the feasibility of modifying the Land Preservation Tax Credit (LPTC) to more effectively direct financial support through the tax credit to conserving priority land. One option would be to revise the eligibility criteria so that credits are restricted to—or provided in higher amounts for—easements on land identified as conservation priorities through the Virginia Conservation Lands Needs Assessment. However, according to staff at the Virginia Department of Taxation (TAX), a sound tax system should be simple to understand, and tax credits should be equally available throughout the State. Modifying the LPTC's eligibility criteria in these ways would make it more difficult for taxpayers to determine their eligibility for the credit, and could make landowners in some parts of the State less likely to qualify for credits. The LPTC may become less effective in promoting land conservation as a result. These modifications to the LPTC would also be administratively costly because DCR would need to review all donated easements to verify their eligibility.

Another option reviewed by JLARC staff is to improve the LPTC's cost efficiency by making it refundable. Taxpayers transferring LPTC credits generally receive about 75 cents for every $1 of credit transferred. The reduced value of a credit reflects its lower resale value, the five percent transfer fee assessed by the State, and a brokerage fee. Under a refundable credit, taxpayers would receive 100 percent of the credit because any credit amount exceeding their tax liability would be refunded. According to TAX staff, a refundable credit would also be easier to administer because staff would not have to track the transfer of credits.

However, making the LPTC refundable could reduce its effectiveness in promoting land conservation. Under Section §58.1-512.C of the *Code of Virginia*, a donated interest must qualify as a charitable donation under IRS rules to receive a tax credit. This requirement allows credit recipients to also receive a federal tax deduction by claiming the easement as a charitable donation. The resulting IRS oversight also helps ensure the integrity of the donation. According to TAX staff, however, the IRS may no longer classify a donated easement as a charitable contribution if it results in a refundable credit. In this case, donors would no longer receive a federal tax deduction for their donation, reducing the incentive for landowner donations. The General Assembly also would need to amend the *Code of Virginia* to remove federal designation as a charitable donation from the eligibility criteria for LPTC credits.

STEP 3: ESTIMATING THE IMPACT OF THE SEVEN DEDICATED REVENUE SOURCE OPTIONS

In the last step, JLARC staff estimated the impact of seven dedicated revenue source options selected in step 2. This estimation process considered four types of impacts:

- the impact on the State's ability to achieve its land conservation goals;
- the annual revenue resulting from the source;
- the cost impact on taxpayers; and
- the impact on the allocation, stability, and cost efficiency of the State's approach to funding land conservation.

JLARC staff used several research activities to estimate these impacts. To estimate the annual revenue resulting from the seven dedicated revenue source options, staff obtained and analyzed data from the following State agencies and entities:

- Virginia Department of Taxation
- Supreme Court of Virginia
- Virginia Department of the Treasury

To estimate the impact of dedicated revenue source options on taxpayers, and identify other concerns with options, JLARC staff conducted structured interviews with State agencies and stakeholders. These included:

- Virginia Department of Agriculture and Consumer Services
- Virginia Department of Conservation and Recreation
- Virginia Department of Forestry
- Virginia Department of Game and Inland Fisheries
- Virginia Department of Historic Resources
- Virginia Department of Taxation
- Virginia Outdoors Foundation
- Virginia Association of Realtors
- The Nature Conservancy
- Piedmont Environmental Council
- Civil War Trust
- Clerk of the Colonial Heights Circuit Court
- Virginia Conservation Credit Pool, LLC

- Virginia Municipal League
- Virginia Association of Counties

Appendix G Agency Responses

As part of an extensive validation process, State agencies and other entities involved in a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff provided an exposure draft of this report to the Secretary of Natural Resources and the following State agencies:

- Department of Agriculture and Consumer Services
- Department of Conservation and Recreation
- Department of Forestry
- Department of Historic Resources
- Department of Game and Inland Fisheries
- Department of Taxation
- Virginia Outdoors Foundation.

Appropriate technical corrections resulting from their comments have been made in this version of the report. This appendix includes written response letters provided by the Department of Conservation and Recreation, the Virginia Outdoors Foundation, the Department of Agriculture and Consumer Services, the Department of Taxation, and the Department of Game and Inland Fisheries.

Douglas W. Domenech
Secretary of Natural Resources

David A. Johnson
Director

COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND RECREATION

203 Governor Street
Richmond, Virginia 23219-2010
(804) 786-1712

August 27, 2012

Mr. Glen S. Tittermary, Director
Joint Legislative Audit and Review Commission
Suite 1100
General Assembly Building, Capitol Square
Richmond, Virginia 23219

Dear Mr. Tittermary:

In response to your correspondence to David A. Johnson, Director of the Virginia Department of Conservation and Recreation, dated August 21, 2012, I wanted to thank you for providing the Virginia Department of Conservation and Recreation (DCR) with the draft report, *Dedicated Revenue Sources for Land Conservation in Virginia*, and for giving DCR the opportunity to review and comment on the exposure draft.

DCR staff has reviewed the report and we wanted to provide you with both substantive general comments and with detailed technical and editorial edits. At this juncture, it is not this agency's intent to speak to the report at the September 10, 2012 JLARC meeting as, given the number of agencies that are part of this study, we believe it is more appropriate for both the Secretary of Natural Resources and the Secretary of Agriculture and Forestry to provide any needed public remarks.

DCR staff is available to provide any additional information regarding these comments/technical edits and is also available to meet with you and your staff, if needed.

Thank you again for sharing this report with us.

Sincerely,

Jeb Wilkinson
Chief Deputy Director For David A. Johnson
Director

Attachments

VIRGINIA OUTDOORS
FOUNDATION

August 30, 2012

Mr. Jamie Bitz
Joint Legislative Audit and Review Commission (JLARC)
General Assembly Bldg Ste 1100
Richmond, VA 23219

Dear Jamie,

I am in receipt of the JLARC report entitled Dedicated Revenue Sources for Land Conservation in Virginia *Exposure Draft* dated August 20, 2012.

It would certainly appear that Virginia's land conservation funding approach does emphasize or encourage conservation of acreage over priority land as Chapter 2 of the Exposure draft suggests. Possibly, however, it might be appropriate to note somewhere that:

- more than 80% of the VOF lands conserved under the tax credit scenario are within the Chesapeake Bay watershed.
- approximately 70% of all land conserved in Virginia is in the Chesapeake Bay drainage area.

Certainly, the Bay watershed represents priority lands for many reasons. You will want to confirm this fact w/ DCR, but I know it is correct for VOF protected lands. As you know, VOF also has Special Project Areas that represent our priority areas designations.

The Report represents a fair and balanced assessment and analysis and I have tried to limit my comments since I know that time is of the essence to complete this project.

Sincerely,

G. Robert Lee
Executive Director

virginiaoutdoorsfoundation.org

Executive Office/Northern Piedmont Region | 39 Garrett Street, Suite 200 Warrenton, VA 20186 | P. 540.347.7727 | F. 540.347.7711

Matthew J. Lohr
Commissioner

COMMONWEALTH *of* VIRGINIA

Department of Agriculture and Consumer Services

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www.vdacs.virginia.gov

August 28, 2012

Mr. Glen S. Tittermary, Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building, Capitol Square
Richmond, VA 23219

Dear Mr. Tittermary:

Thank you for the opportunity to review and comment on the exposure draft entitled *Dedicated Revenue Sources for Land Conservation in Virginia* dated August 20, 2012. Staff at the Virginia Department of Agriculture and Consumer Services (VDACS) reviewed the draft, and overall thought that the information and analysis was well done and quite extensive. This report should prove useful for the General Assembly and others examining options for long term land conservation funding in Virginia. VDACS staff did identify a few small technical corrections, and these were communicated to Jamie Bitz on your staff by email on August 28, 2012.

Thank you again for the opportunity to participate in the research and interview stages of the report development, and for the chance to review this exposure draft. Please feel free to contact me should VDACS be able to provide any additional information or assistance.

Sincerely,

Matthew J. Lohr
Commissioner

CC: Kevin Schmidt, Coordinator, Office of Farmland Preservation

COMMONWEALTH of VIRGINIA

Department of Taxation

August 28, 2012

Mr. Glen S. Tittermary
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, Virginia 23219

Glen
Dear ~~Mr. Tittermary~~:

Thank you for the opportunity to review and comment on the exposure draft report: *Dedicated Revenue Sources for Land Conservation in Virginia,* dated August 20, 2012. The staff of the Department of Taxation believes the draft report will be quite useful to the members of the General Assembly in understanding the current funding sources for land conservation as well as identifying potential long-term funding sources. We also appreciate you incorporating our comments of August 24, 2012, into the final report.

Thank you again for the opportunity to comment on the exposure draft. Should you have any further inquiries, please feel free to contact my office.

Sincerely,

Craig M. Burns
Tax Commissioner

c: The Honorable Richard D. Brown
Secretary of Finance

COMMONWEALTH of VIRGINIA

Douglas W. Domenech
Secretary of Natural Resources

Department of Game and Inland Fisheries

Robert W. Duncan
Executive Director

August 28, 2012

Mr. Glen S. Tittermary
Joint Legislative Audit and Review Commission
General Assembly Building, Suite 1100
Richmond, VA 23219

Dear Director Tittermary:

The Virginia Department of Game and Inland Fisheries (DGIF) welcomes the opportunity to comment on the study of dedicated revenue sources for land conservation in Virginia. As the agency responsible for wildlife conservation in Virginia, we appreciate the need for conserved lands to provide wildlife habitat and to protect both nearby wildlife habitats and those downstream.

Under the instruction of Secretary Domenech, our comments will be consolidated along with other natural resource agencies into one response from the Secretariat. We remain willing to speak with your staff and you should any of these proposals affecting DGIF's ability to acquire land in support of our mission move forward.

Sincerely,

Bob Duncan

Robert W. Duncan
Executive Director

RWD/ag

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